

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA, :

Plaintiff, : Criminal Action No.

v. : 1:16-cr-10094-LTS

ROSS MCLELLAN, :

Defendant. :

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BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

JURY TRIAL
Day 4

Thursday, June 7, 2018
8:37 a.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

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P R O C E E D I N G S

(In open court.)

THE COURT: I see all counsel and Mr. McLellan.

A couple of things. After the break this morning, after the 11:00 break, I'll talk to the jurors about the schedule for next week. And I guess the question -- the schedule will be Monday 9:00 to 1:00, Tuesday 9:00 to 1:00 plus the afternoon, Wednesday 9:00 to 1:00 plus the afternoon, no court Thursday, Friday 9:00 to 1:00.

The two questions I have are: one, how much time in the afternoon do you want; and two, what, if anything, do you want me to say about other afternoons that we might be sitting prior to the day they get the case?

MR. FRANK: So it's a little tough to say, Your Honor. Much of it depends on how -- when Mr. Pennings gets off the stand. The witnesses for whom we're asking the afternoon testimony are not going to have terribly long direct examinations, and my understanding is there's not going to be terribly long cross-examinations. So I would think probably 2:00 to 4:00 would be sufficient, but I don't want to promise that because I just --

THE COURT: Sufficient in terms of that day or sufficient in terms of other afternoons?

MR. FRANK: Sufficient in terms of Tuesday and Wednesday.

1 THE COURT: Okay.

2 MR. FRANK: You know, if Mr. Pennings gets off the
3 stand Monday or Tuesday morning, you know, there are what?
4 Three witnesses who we'd like to get out by Wednesday.

5 THE COURT: I see. So basically what this is about
6 is you have three witnesses after Mr. Pennings who are from
7 overseas. You want them all done by Wednesday when we leave
8 the courtroom.

9 MR. FRANK: That's right.

10 THE COURT: So if Pennings were really fast, you
11 might have all three done. You might not even want to sit on
12 Wednesday afternoon, on the one hand; on the other hand, if
13 they're going really slowly you'd like to sit past 4:00.

14 MR. FRANK: That's right. But I think the need to
15 stay past 4:00, I mean, unless Pennings goes very long, it
16 seems unlikely we would need to go past 4:00.

17 THE COURT: So if I said 4:00 -- and I don't really
18 want to go past 4:00. I'd rather say 4:30 and then have
19 4:00.

20 MR. FRANK: Then I would say 5:00 and then, if it's
21 4:00, they'll be happy.

22 THE COURT: All right. And then in terms of other
23 afternoons, do either of you anticipate prior to them
24 getting -- the day they get the case, you don't anticipate
25 we'd need other afternoons?

1 MR. FRANK: At this point I don't anticipate that.

2 THE COURT: We could still get the jury the case on
3 that Thursday.

4 MR. WEINBERG: And my only reservation is that we
5 have several experts who will be coming over from Great
6 Britain. And again, dependent on the length of the
7 government's --

8 THE COURT: I think I'm not going to say anything
9 about other afternoons other than that we're on track. And
10 this is as much as an accommodation scheduling people from
11 overseas so they don't have to spend an inordinate amount of
12 time in the U.S. as it is scheduling in terms of where we are
13 until the end date.

14 MR. FRANK: That seems fair, Your Honor. The only
15 addendum I would make to that is, depending on what the
16 defense case looks like, there may be a rebuttal witness or
17 two.

18 THE COURT: Okay. I'm not going to address that.
19 All right. Do you think we'll need to go past 4:00 for the
20 afternoons next week to accomplish those three? Do you have
21 a sense?

22 MR. WEINBERG: I think we probably won't need two
23 afternoons, but that's just guesswork based on my
24 understanding that these three witnesses won't be longer
25 than --

1 THE COURT: I think I'll tell them 9:00 to 1:00,
2 2:00 to 4:30, but we might not need all of that time. We
3 might. We're reserving it. We'll see. That takes care of
4 the schedule.

5 With respect to the limiting instructions we talked
6 about about Mr. Boomgaardt, when do you want me to give that?

7 MR. WEINBERG: When and if the government offers
8 his plea agreement as an exhibit.

9 THE COURT: So do it when they offer it. And if
10 they don't, if you offer it, when you offer it.

11 MR. WEINBERG: Yes.

12 MR. FRANK: It's our plan to offer it. It will be
13 at the end of his testimony.

14 THE COURT: That's what I thought. All right.
15 Okay. I don't have anything else. Do either of you?

16 MR. FRANK: No.

17 THE COURT: Okay. All right. I must say that I
18 liked your estimate, Mr. Frank, better about the duration of
19 the examination than Mr. Johnston's estimate, although I will
20 give Mr. Johnston that his estimate was more accurate. But I
21 do think we should move it along.

22 I see what you're doing and that's fine, and I'm
23 not -- I understand why you're going through all the things
24 you're going through, and as much as -- but I think we could
25 move it along.

1 I think they've got the point. I think that I
2 understand why you need to go through each alleged victim.
3 I'm not saying you can't. I'm not saying you shouldn't.
4 You're going to make your own decision. It's your case. But
5 I do think that the -- there's an iterative repetition by its
6 nature with each of the victims. They've seen what it is,
7 they understand. You could do those with more dispatch.

8 I understand that at the end you'll have some other
9 things that aren't that same cyclical, iterative process.

10 MR. FRANK: Your Honor, just to allay the court's
11 concerns, we're on the last one, and then we're going into
12 something totally different, which is what we allege to be
13 the cover-up, so it's completely different.

14 THE COURT: Okay. How long do you think you'll be
15 with him?

16 MR. JOHNSTON: Depending on objections, hour to
17 hour and a half.

18 THE COURT: Okay. So my biggest suggestion with
19 most of the objections I think have been with respect to the
20 form. And I do -- I just say -- and I'll tell you all
21 something that is completely plagiarized from Judge Saylor,
22 which is his view, which I think is correct, that one should
23 write out all the questions for direct and cross-examination,
24 every question in advance, as well as all the permutations
25 depending upon what the witness answers.

1 It's an incredibly onerous and burdensome exercise,
2 I recognize, but it is a useful one. But I do think the sort
3 of who, what, when, where, why, some of that, when you switch
4 to that, boom, you get what you want and you move on.

5 I understand it's hard and sometimes it's hard to
6 direct the witness to sort of the area that you want to focus
7 on, but that sometimes helps.

8 So all right. Then I'll see you in a couple of
9 minutes, two minutes before 9:00 or so, and we'll check on
10 the jury then. And at that point you can have
11 Mr. Boomgaardt --

12 Oh, one other question. I know you're going have
13 to Mr. Boomgaardt take the witness stand. Do all of you
14 understand the sequestration order to mean that while someone
15 is on the witness stand you shouldn't be talking to them?

16 MR. FRANK: Your Honor, we understand it to mean
17 that once they're on cross we shouldn't be talking to them.
18 That's how we've always understood it. That said, we haven't
19 had extensive conversations with the witness since he's been
20 on direct.

21 MR. WEINBERG: I certainly agree with Mr. Frank
22 that, at minimum, once cross-examination starts and even if
23 it extends over that to the next day, there should be no
24 contact between prosecutor and the witness or indirectly with
25 the witness's lawyer to the witness.

1 I prefer that the court in its discretion or
2 Mr. Frank in his discretion does not, you know, meet with
3 witnesses midway through direct to comment or to further
4 rehearse the rest of their direct testimony. But I would ask
5 the court for the exercise --

6 THE COURT: I think it's wiser not to meet with
7 people in the course of their direct, once they've started
8 testifying. I'm not -- so I just think that it's better not
9 to, and that would be the better course I think once they
10 take the witness stand.

11 MR. FRANK: Thank you, Your Honor.

12 THE COURT: Most of these people, I would imagine
13 they wouldn't have an opportunity anyway. Other than
14 Pennings, among the future witnesses, I imagine most of them
15 are going to be up and down on the same day if not even
16 before the break. Okay.

17 MR. FRANK: Just to be clear, Your Honor, we don't
18 rehearse.

19 THE COURT: Oh. That was Mr. Weinberg's --

20 MR. FRANK: I know.

21 MR. WEINBERG: We may disagree about the use of
22 that word. But however, Your Honor --

23 THE COURT: You might not even agree on the meaning
24 as applied to this given -- as applied to a given set of
25 facts.

1 MR. WEINBERG: While going over Mr. Boomgaardt's
2 Rule 11 transcript, which was a plea before a different
3 judge, there again, there was a section that was redacted or
4 sealed from the transcript.

5 THE COURT: You need an order from me or from Judge
6 Casper?

7 MR. WEINBERG: I would ask the court to issue an
8 order. I don't think Mr. Frank would object.

9 MR. FRANK: No objection.

10 THE COURT: Fine. I order that that be disclosed.

11 MR. FRANK: Although it -- as a technical matter,
12 does that need to be done by Judge Casper?

13 THE COURT: Here is what -- I order that in this
14 case you're entitled to review it, and I note that I make
15 that order without objection from the government.

16 I think that it will require something from Judge
17 Casper. And to the extent that that is required, I think go
18 to the court reporter and ask for it. I'll email Judge
19 Casper now, but I think you should -- it may be that the
20 court reporter will need something from Judge Casper because
21 it's her case. I can't imagine that there would be an issue,
22 but just ministerially I think Mr. Frank is correct that it
23 probably needs an order from her. And I will email her now.
24 Okay.

25 MR. FRANK: Thank you, Your Honor.

1 MR. WEINBERG: Thank you, Your Honor.

2 THE COURT: Thank you.

3 COURTROOM CLERK: This matter is in recess.

4 (Recess taken 8:47 a.m.)

5 THE COURT: Ms. Simeone, will you go get the jury.

6 I e-mailed Judge Casper.

7 MR. WEINBERG: Thank you so much.

8 COURTROOM CLERK: All rise for the jury.

9 (Jury enters the courtroom.)

10 THE COURT: Good morning, ladies and gentlemen. No
11 one discussed the case with anyone? No one did any
12 independent research? All right. Good. So we'll resume.

13 I remind you you remain under oath, Mr. Boomgaardt.

14 Go ahead, Mr. Johnston.

15 **RICHARD BOOMGARDT**

16 having been previously duly sworn, testified as follows:

17 **DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF, Cont.**

18 BY MR. JOHNSTON:

19 **Q.** Mr. Boomgaardt, when we finished yesterday, were we
20 discussing the Royal Mail transition?

21 **A.** Yes, we were.

22 **Q.** And were we reviewing the proposal that you had sent to
23 Royal Mail?

24 **A.** Yes, we were.

25 **Q.** If we could take a look at that proposal again, 91.1,

1 please. It's already been admitted into evidence. If we
2 could, take a look at page 19.

3 If we could, take a look at Paragraph 1.10.
4 Directing your attention to this paragraph, Mr. Boomgaardt,
5 what have you proposed to charge Royal Mail for this
6 transition?

7 **A.** A flat management fee of 1.75 basis points of the value
8 of the legacy assets.

9 **Q.** Is this a flat fee, you say?

10 **A.** Yes.

11 **Q.** Was this in addition or in lieu of trading commissions?

12 **A.** It was to replace trading commissions. So in lieu of.

13 **Q.** All right. If we could take a look at page 21?

14 **MR. JOHNSTON:** Please zoom in on the table, please.

15 **Q.** Directing your attention to the top, what does the flat
16 management fee work out to in terms of the amount you would
17 earn?

18 **A.** It's 560,000 pounds.

19 **Q.** That's calculated based off of how large of the
20 portfolio?

21 **A.** That's right. 3.2 billion, as we say there.

22 **Q.** What did you want the client to understand when you
23 included this number?

24 **A.** That we were going to charge a flat management fee to be
25 invoiced at the end and that it would replace any commission

1 charges, per-trade commission charges.

2 **Q.** Directing your attention to the other numbers, was there
3 any -- did you want the client to understand that there were
4 additional sources of trading revenue for State Street within
5 here?

6 THE COURT: How about what else did you want the
7 client to understand from this chart?

8 **Q.** What else did you want the client to understand from this
9 chart?

10 **A.** That there were other costs involved in the transition,
11 but these were market costs rather than money that was going
12 to go to State Street.

13 MR. JOHNSTON: You can take this down, Erin.

14 **Q.** Mr. Boomgaardt, at this point when you're pitching for
15 Royal Mail's business, what was your approach for landing
16 these elephant deals?

17 **A.** Well, it was to convince the client that we were the
18 right place to do that; that we had the right trading
19 strategy to do it; but also that we were going to go in with
20 a very, very competitive commission/flat fee, but our fee
21 quote was going to be very aggressive.

22 **Q.** And then what, if anything, would you do if you won the
23 deal based on a competitive commission quote?

24 **A.** Well, for these ones, by this stage it was, you know,
25 part of the plan was to take a commission anyway. So to take

1 a commission that we didn't disclose to the clients.

2 **Q.** Did you participate in executing the Royal Mail
3 transition?

4 **A.** Yes, I was involved in the Royal Mail transition, yeah.

5 **Q.** What was your role in executing the transition?

6 **A.** Again, I mean, I was overseeing the analysts that were
7 looking at that and making sure that everything was going
8 well and also to look over the undisclosed commissions that
9 we were charging.

10 **Q.** What types of assets were being bought and sold in this
11 transition?

12 **A.** They were bonds.

13 **Q.** Where were the bonds being sold?

14 **A.** Both in the U.S. and in Europe.

15 **Q.** How much hidden commissions were taken in each place?

16 **A.** It was 1 basis point of yield in the U.S., I believe, and
17 2 basis points of yield on the European executions.

18 **Q.** Do you know who coordinated the application of the
19 commissions in America?

20 **A.** Ross did, Ross McLellan.

21 **Q.** How do you know that?

22 **A.** Because it was -- we discussed it as to how the -- what
23 the mechanics of how that was going to work. It needed some
24 oversight. So doing the part in Europe was an easy thing for
25 Ed and I to do, and Ross said he would look after making sure

1 that the traders were properly instructed in the U.S. as
2 well.

3 **Q.** How did you communicate with Ross in this time period?

4 **A.** Well, via phone calls.

5 **Q.** Who coordinated the application of the hidden commissions
6 in Europe?

7 **A.** That was between myself and Ed Pennings.

8 MR. JOHNSTON: Let's take a look, if we could just
9 show a document to the witness, please.

10 THE COURT: Go ahead.

11 MR. JOHNSTON: Exhibit 148. Zoom in on the top,
12 please.

13 **Q.** Do you recognize this document, Mr. Boomgaardt?

14 **A.** Yes.

15 **Q.** What is it?

16 **A.** It's an email from me to Ian McKnight, who is the client
17 at Royal Mail.

18 **Q.** Concerning what?

19 **A.** Our post-transition analysis, so the post-trade report
20 that we send to the clients.

21 **Q.** What's included as an attachment?

22 **A.** The Royal Mail post-trade analysis.

23 MR. JOHNSTON: Your Honor, at this time the
24 government moves to admit Exhibit 148 and 148.1.

25 MR. WEINBERG: No objection.

1 THE COURT: Admitted. You may publish it to the
2 jury.

3 (Exhibit Nos. 148 and 148.1 admitted into
4 evidence.)

5 Q. Mr. Boomgaardt, directing your attention to the second --
6 to the first paragraph, where you say, "We are pleased to
7 report that the shortfall of 45 BPs is very much in line with
8 the mean pre-trade cost estimate."

9 What are you referring to there?

10 A. Well, before the transition we give them a cost estimate
11 which shows our sort of central point guess. And as I said,
12 about opportunity cost and markets moving around, we provide
13 them an estimated range of outcomes as well. So what I'm
14 saying there is that 45 basis points is very much in line
15 with what our central estimate was.

16 Q. And by "estimate," do you mean the implementation
17 shortfall estimate?

18 A. That's right, yes, of the pre-trade analysis that we give
19 them of our estimate of the implementation shortfall costs.

20 Q. Are we talking total costs here?

21 A. Yes.

22 Q. Let's take a look at the second paragraph where you say,
23 "We'll be shortly sending through an invoice, as agreed,
24 reflecting the transition fee of 1.75 basis points on the
25 value of assets coming into the transition."

1 What do you mean by that sentence?

2 **A.** Well, that we're -- as agreed, we will be sending you
3 through an invoice for the management fee that we had agreed
4 prior to the transition.

5 **Q.** Was an invoice sent?

6 **A.** Yes, I believe it was.

7 **Q.** What did you want the client to understand when that
8 invoice was sent?

9 **A.** That there was their fee. That was the remuneration, the
10 money that State Street was making out of this, and it was in
11 lieu of any trading commissions.

12 MR. JOHNSTON: We can take a look at the
13 attachment, please, 148.1.

14 **Q.** Do you recognize this document?

15 **A.** Yes, I do.

16 MR. JOHNSTON: Let's take a look at page 2. We can
17 zoom in at the bottom table.

18 **Q.** Directing your attention to where it says State Street's
19 fee, 1.75 basis points and then 242,305 pounds, do you know
20 approximately what the -- at this time what the value of that
21 number would be in dollars?

22 THE COURT: At this time or the --

23 MR. JOHNSTON: The time of this document.

24 **A.** It would be something in the region of 350,000 or
25 400,000. Somewhere around there, I think.

1 **Q.** Was that all the money that State Street's transition
2 team had made in this transition?

3 **A.** No.

4 **Q.** How much had you made?

5 **A.** Again, I can't remember the exact number but in the
6 millions, certainly over a million, yeah.

7 MR. JOHNSTON: You can take this down.

8 **Q.** Is there anywhere in this document, Mr. Boomgaardt, where
9 that extra revenue, the 3 million you talked about, is
10 disclosed?

11 MR. WEINBERG: I object, Your Honor. He didn't
12 talk about 3 million. He just said millions.

13 THE COURT: Sustained as to that.

14 **Q.** Is there anywhere in this document where those extra
15 millions that you spoke about are disclosed?

16 **A.** Not explicitly, no. It's included in the total cost
17 number, but it's not broken out specifically.

18 **Q.** So how would a client know if you hadn't lived up to your
19 end of the bargain?

20 **A.** Well, they wouldn't know that we had taken undisclosed
21 commissions from this, no. All they would see was the total
22 cost.

23 **Q.** Who, if anyone, did they have to trust?

24 **A.** Well, they needed to trust us. There was no other way
25 for them to get that information. They could ask the

1 questions. But absent asking the questions, there's no way
2 from this report or anything that they had seen from us or
3 that their custodian had seen from us that they would be able
4 to glean that information.

5 **Q.** What, if anything, had you said to make your clients
6 trust you?

7 **A.** Well, we had told them we weren't going to be charging
8 commissions on these and that the management fee was in lieu
9 of those commissions.

10 And, you know, we had worked hard and I certainly
11 personally worked hard to get a reputation for telling the
12 truth and being trustworthy. So yeah, they took what we said
13 at face value, as I guess they were entitled to do. They had
14 no reason to believe that we weren't doing what we told them.

15 **MR. WEINBERG:** I object to that and move to strike
16 it.

17 **THE COURT:** Sustained just as to the part about
18 what they had reason to know or what was in their head. He
19 can testify to what he was intending to convey to them and
20 what he was trying to do but not what they actually were
21 thinking.

22 Go ahead.

23 **Q.** Mr. Boomgaardt, did there come a time when Royal Mail
24 started asking questions about how much you had earned?

25 **A.** Yes, they did.

1 **Q.** When did that happen?

2 **A.** It was roughly May 2011.

3 **Q.** Approximately how long after this post-trade report that
4 you had sent out?

5 **A.** Oh, a short number of weeks I believe.

6 **Q.** Who did you hear from -- how did you hear that Royal Mail
7 was questioning the trades that you had done for them?

8 **A.** Ed Pennings told me.

9 **Q.** How did he explain that to you?

10 **A.** He called me into his office and said that Royal Mail was
11 asking questions about the transition and whether the amount
12 that we put in there was our -- was our full -- the full
13 amount of money that State Street had made from this
14 transition.

15 **Q.** Was there any mention of the types of bonds that they
16 were looking at?

17 **A.** Eventually there was, yeah. I don't believe that was the
18 very first contact, but they had specific questions around
19 U.S. bonds, yeah.

20 **Q.** What did you and Ed do after learning that there were
21 these questions from Royal Mail?

22 **A.** The questions that Royal Mail asked about U.S. bonds
23 indicated that they had seen U.S. bond executions that
24 indicated to them that there was something that needed
25 explaining.

1 And just to -- I guess to go back a half a step, in
2 the U.S. bond markets, there are or at there were, at least,
3 certain bonds that need to be reported. So the trades need
4 to be reported to a -- in a system called TRACE that shows
5 you the actual executions that happened across these bonds.

6 And Royal Mail was questioning why there were some
7 executions in some of the bonds that they believed that we
8 traded in on their behalf where there were two trades done in
9 the same size but at different prices. That, to them, needed
10 a little bit further explanation for us -- from us, I should
11 say.

12 **Q.** After speaking with Ed Pennings about these questions
13 from Royal Mail, who, if anyone, did you speak with?

14 **A.** Well, Ross McLellan was looped in. Ian Holden was also
15 in those conversations with myself and Ed Pennings.

16 **Q.** Did that happen on that day or later?

17 **A.** I believe it was the same day. It may have been -- there
18 may have been two communications, one certainly from Royal
19 Mail asking whether that was the only remuneration, then
20 secondly about specifics around the U.S. bond transition.

21 **Q.** Where did you have these phone calls?

22 **A.** In Ed's office.

23 **Q.** Who was there?

24 **A.** So Ed, myself, Ian Holden, and Ross McLellan on the other
25 line.

1 **Q.** What did you talk about in those phone calls?

2 **A.** We talked about, you know, what we do and how we handle
3 the situation. This was -- you know, this plan of charging
4 these undisclosed commissions was really predicated on
5 clients not finding out about it.

6 Here was a client that all of a sudden was asking
7 us questions that indicated, you know -- you know, these were
8 the type of questions that we had designed our plan not to
9 have to answer. So, you know, for us, it was a -- pardon the
10 vernacular -- it was a bit of an "Oh, shit" moment.

11 **Q.** Did you decide to tell the truth at that point?

12 **A.** No.

13 **Q.** What was decided?

14 **A.** It was decided -- and I guess we had a conversation
15 firstly with Ed, myself, and Ian in London -- that if they
16 could see what was happening in the U.S., we may need to pay
17 back those commissions to them, but that if we were going to
18 go down that road of paying back these undisclosed
19 commissions to the client, we shouldn't stop at the U.S. We
20 should give them back all of those. If we're not --

21 **Q.** So you said "all of those."

22 **A.** All of those including the European commissions. And
23 that was -- that was the road that we as the European team, I
24 guess, were comfortable going down.

25 A further call with Ross, I guess, changed our

1 minds and was directed by him to -- you know, how we were
2 going to handle this situation was we were going to pay back
3 those -- pay back the U.S. commissions on the U.S. bonds but
4 keep the European ones and to simply call the U.S. executions
5 a fat-finger trading error rather than a deliberate
6 undisclosed commission.

7 **Q.** Can you tell us what a fat-finger trading error is?

8 **A.** Well, "fat finger" means a trader that has accidentally
9 pressed the wrong button and somehow applied these
10 commissions or spreads in error.

11 **Q.** Was this just a fat-finger error?

12 **A.** No. It was a deliberate plan to take these commissions.

13 **Q.** Whose words were those?

14 **A.** Those were -- pardon me. Those are Ross's words.

15 **Q.** Who communicated this back to the client?

16 **A.** Ed Pennings communicated that to back to the client,
17 yeah. He was the main client contact person from our side.

18 **Q.** In this call with Ross McLellan, Ian Holden, and Ed
19 Pennings, what, if anything, was said about relying on the
20 contract and telling the client that you had justifiably
21 earned this money?

22 **MR. WEINBERG:** Objection, leading.

23 **THE COURT:** Sustained.

24 **Q.** What, if anything, was said about the contract in that
25 call?

1 **A.** That we were justified by the contract in taking those
2 spreads. You know, that from my perspective --

3 MR. WEINBERG: Objection to his perspective. It's
4 beyond the scope of the question. The question was what was
5 said about the contract.

6 THE COURT: Okay. You've answered the question.
7 You can ask the next question.

8 **Q.** What was your perspective on the contract and this
9 conduct?

10 MR. WEINBERG: Objection.

11 THE COURT: What his understanding was, I think you
12 can ask.

13 **Q.** What was your understanding of the contract and the
14 refund?

15 **A.** My understanding of the contract was -- you know, at the
16 point of having looked at it again, was that there was some
17 wording but with a caveat around it. I wasn't convinced that
18 that allowed us to do -- to take those commissions.

19 But what I was certain it didn't allow us to do was
20 to tell the client we weren't going to do it and do it
21 anyway. You know, it was obvious to me that the contract
22 didn't allow us to lie to our client. So kind of whatever it
23 said, that was the bit I guess that was most troubling on a
24 personal level.

25 **Q.** Did anyone say, "Let's go to the client with the contract

1 "?

2 **A.** It was discussed as an option but clearly put to one
3 side. You know, this is a -- you know, in any client
4 relationship issue, you don't -- the first point of contact
5 is not to rush to the contract and start a legal battle with
6 them. So it was decided to -- well, to further lie to them
7 in a -- I guess in a -- probably the only natural extension
8 of the plan that we had employed was to continue to lie. And
9 that was the agreement we went with. That was the plan we
10 employed, digging the hole deeper, if you like.

11 **Q.** You testified earlier that you wanted to return the
12 European trades, correct?

13 **A.** The commissions made on the European trades, certainly.

14 **Q.** Pardon me. The commissions. Do you know why you didn't
15 decide to also return that money?

16 **A.** Well, Ross decided not to return that money. And, you
17 know, the European trades didn't have the same level of
18 disclosure. There is no TRACE reporting system in Europe the
19 way there is in the U.S. So again, we hadn't sent them
20 anything that would allow them to be able to see that there
21 was commissions taken, and there was no bond reporting system
22 equivalent to TRACE where somebody could find similar
23 information for European trades.

24 **Q.** Did you think they would find out about the European
25 commissions?

1 **A.** If you think to the end game of where it's going to go,
2 that was, it seemed an inevitability that, yes, at some point
3 they are going to find out about that. We ended up taking a
4 plan that was predicated on them believing the next lie we
5 were going to tell them and then going away. That seemed
6 unlikely to succeed to me.

7 MR. WEINBERG: I object. Move to strike.

8 THE COURT: Overruled.

9 MR. JOHNSTON: I'd like to show an email to the
10 witness.

11 THE COURT: Okay.

12 MR. JOHNSTON: Government Exhibit 173.

13 **Q.** Take a look at the top. Do you recognize this email,
14 Mr. Boomgaardt?

15 **A.** Yes, I do.

16 **Q.** Who is it between?

17 **A.** It is from me to Ian McKnight, copied to Ed Pennings and
18 Heath Mottran, who's another person at Royal Mail.

19 **Q.** What's the date?

20 **A.** 5th of July, 2011.

21 **Q.** What's this in regard to?

22 **A.** It says it's in regard to an updated post-trade analysis
23 that we sent to the client.

24 MR. JOHNSTON: Your Honor, at this point the
25 government moves to admit Exhibit 173.

1 MR. WEINBERG: No objection.

2 THE COURT: Admitted. You may publish it.

3 (Exhibit No. 173 admitted into evidence.)

4 Q. Let's take this chain chronologically, if we could.

5 MR. JOHNSTON: Go to page 2, please, and zoom in on
6 the first email.

7 Q. Mr. Boomgaardt, I want to direct your attention to the
8 second sentence where you say, "We are pleased to report" --
9 sorry, second paragraph.

10 "We are pleased to report that the shortfall has
11 reduced to 40 BPs versus a pre-trade estimated mean cost of
12 45 BPs."

13 What are you referring to there?

14 A. That's a reflection of the refund that we had given to
15 the client for the U.S. commissions that -- the commissions
16 charged on the U.S. trades. That refund had the effect of
17 taking off 5 basis points of their implementation shortfall.
18 So instead of it being 45, we refunded it, and their total
19 cost was now sitting at 40 basis points.

20 Q. So they got a better outcome?

21 A. Yes, yeah.

22 Q. What was the dollar value of the refund of the American
23 commissions?

24 A. It was about a million dollars.

25 Q. Let's take a look at the next paragraph where you say,

1 "On the topic of independent performance measurement, we have
2 reached out to Plexus, who confirmed that they only offer
3 performance measurement for equities."

4 Then there's some other sentences here. What were
5 you referring to here?

6 **A.** So as part of our message to go back to Royal Mail on
7 this, Ross instructed that we should tell them that we will
8 find a -- we will get the implementation shortfall
9 independently verified, the calculation of how we've done
10 that. We'll offer that to the client, to have somebody come
11 in and make sure that we've calculated that implementation
12 shortfall correctly.

13 What that paragraph is saying is there are, I
14 guess, lots of companies that do implementation
15 shortfall-type analysis, but not very many of them do them
16 for bond portfolios. So when we spoke to some of the biggest
17 providers, you know, they were equities only, so they weren't
18 able to offer that service for bond portfolios.

19 **Q.** What was your understanding of why this analysis was
20 being suggested to the client?

21 **A.** So that they could have some comfort that we had
22 calculated that number correctly, the implementation
23 shortfall number correctly. It was, I guess, a little bit of
24 a smoke screen. Because again, we had no -- we had no plans
25 to divulge to any performance measurer that we had taken

1 commissions in Europe as well.

2 **Q.** Were there any concerns about a performance measurer
3 finding the European trades?

4 **A.** Well, the performance measurers take data from us, so
5 again we would be in control of the data that we were
6 supplying to them, so --

7 **Q.** What would be the only way that a performance measurer
8 could find the European commissions?

9 **A.** They would have to have access to the trades, where we
10 traded them in the market, rather than what we had booked out
11 to the clients, so effectively looking at State Street's
12 books and records rather than the client executions.

13 **Q.** Did those records exist anywhere other than State Street?

14 **A.** No, not as far as I know.

15 **Q.** Let's take a look at page 1 of this email chain.

16 MR. JOHNSTON: We can go down to the bottom email,
17 please.

18 **Q.** Who sent this response?

19 **A.** That's from Ian McKnight at Royal Mail.

20 **Q.** Let's take a look at the second paragraph where
21 Mr. McKnight says, "I've consulted on this and understand
22 that Inalytics are the market leader in independent reviews.
23 And my preference is that you mandate them to perform the
24 audit, irrespective of the higher cost."

25 Do you know who Inalytics is?

1 **A.** Yes, I do.

2 **Q.** Who is it?

3 **A.** Inalytics is a company that specializes in calculating
4 and examining and auditing transition management assignments.
5 So calculating implementation shortfall but also going
6 further than that and digging into the quality of execution
7 and the sources of remuneration and that sort of thing.

8 **Q.** Do you know any of the people or at this time did you
9 know any of the people at Inalytics?

10 **A.** Yes. Yes, I knew them well.

11 **Q.** Who did you know?

12 **A.** I knew Rick Demasio, who is the guy that started that
13 business. I knew him for -- I knew him from kind of the late
14 '90s, I guess. And Graham Dixon, who really headed up the
15 transition management bit of that. He and I had known each
16 other for a long time but also worked directly together at
17 Credit Suisse.

18 **Q.** You said you worked with Graham Dixon at Credit Suisse?

19 **A.** Yes.

20 **Q.** How long did you work for him there or work with him
21 there?

22 **A.** Four years. Three or four years, something like that I
23 think.

24 **Q.** What sort of work did you do with him at Credit Suisse?

25 **A.** We did transition management together. We worked on the

1 transition manager team.

2 **Q.** What was your personal relationship with Mr. Dixon at
3 this time?

4 **A.** Well, we were co-workers. At this time at Inalytics?

5 **Q.** Yeah.

6 **A.** Yeah, I was still in contact with him. He was an
7 industry contact. I mean, we weren't close friends, but
8 certainly we were, you know, friendly and professional.

9 **Q.** What was your professional opinion of him?

10 **A.** I hold Graham in very, very high regard, a man of the
11 highest integrity and --

12 MR. WEINBERG: I object, Your Honor. It's
13 irrelevant.

14 THE COURT: What's the relevance?

15 MR. JOHNSTON: Relevance is how they interact.
16 There's a --

17 THE COURT: How do we get into -- why is his
18 character relevant?

19 MR. JOHNSTON: Because Mr. Boomgaardt is tasked
20 with being the communicator with Mr. Dixon.

21 THE COURT: That's his relationship, but why is his
22 evaluation --

23 MR. JOHNSTON: I guess it can be apparent further
24 in the examination why it matters.

25 THE COURT: All right. Sustained for now.

1 **Q.** Who first suggested that Inalytics be used?

2 **A.** I believe -- well, it was somebody that we obviously
3 thought of as well, but it was certainly the preferred route
4 that Royal Mail wanted to go down.

5 Inalytics is also a U.K.-based company. The other
6 ones that we were talking about were more U.S.-based so it's
7 not overly surprising that Royal Mail wanted to go with
8 Inalytics.

9 From our perspective, the service they were
10 offering to provide was quite a lot more expensive, which was
11 why we were a little reluctant to go -- to say that we would
12 pay for that.

13 **Q.** What, if any, other concerns did you have about Inalytics
14 being on this job?

15 **A.** I knew the job that Inalytics did. We had been involved
16 with them in other transitions, and it's more in depth than
17 just calculating the implementation shortfall. They are
18 renowned for asking difficult questions. So if we were going
19 to get them involved, there would be some difficult questions
20 asked to answer.

21 **Q.** What questions did you think they might ask?

22 **A.** Well, sources of remuneration. The fact that there was
23 these commissions charged in the U.S. would certainly give
24 them reason to look very closely at our European executions
25 as well.

1 **Q.** Did you share these concerns with anyone about what
2 Inalytics may or may not find?

3 **A.** Yes. Well, over time, certainly, yes. We knew that
4 Inalytics was going to do a thorough job on this. I mean,
5 he's talked about them performing an audit, so that's beyond
6 the scope of what we had envisaged offering the client.

7 **Q.** Who, if anyone, did you share those concerns with?

8 **A.** Oh, Ed and Ross.

9 **Q.** What were -- did Ross or Ed have any response to your
10 concerns?

11 **A.** Nothing other than trying to stick to the same story that
12 we're not going to show them -- our plan is not to show them
13 our street-side execution, so the market side of the
14 executions in Europe. I don't know whether they shared my
15 concerns that Inalytics would get there in the end or not,
16 but I think that certainly turned out that way.

17 **Q.** What was the information that couldn't be shared with
18 Inalytics?

19 **A.** We didn't want to share with Inalytics the executions
20 that we had actually done in the market so that they could
21 compare what we booked out to the client versus the
22 executions we actually did, so seeing what that undisclosed
23 commission was.

24 **Q.** What had you promised to the client for those particular
25 trades?

1 MR. WEINBERG: Objection. Asked and answered.

2 THE COURT: Sustained.

3 Q. Let's look further down this email where Mr. McKnight
4 says, "We are now very concerned that the initial mistake
5 than the 1 mil overcharge and the fact that Loomis have
6 complained to us about notification procedure this week, too.
7 So I think it's best that any review is done properly and
8 crucially independently."

9 What's your understanding of what Mr. McKnight was
10 sharing with you?

11 A. He's sharing that he has concerns around this. And you
12 know, it's not too surprising if all of a sudden we've said
13 we owe you a million bucks that he wants to look into things
14 in a little more detail. And he's asking to look into them
15 in quite a lot more detail.

16 Q. Let's take a look then at the bottom where he says,
17 halfway through the last sentence, "I don't feel that the
18 level of post-transition detail we've had so far is
19 satisfactory to be comfortable that everything is now as it
20 should have been. And given the sums involved, it is crucial
21 that transparency is there for us."

22 What's your understanding of what is lacking in the
23 post-transition detail?

24 A. Well, they want to see all of the detail that's there.
25 They want to know for certain that there hasn't been any

1 other remuneration, any other money that State Street has
2 taken out of this. And their view is they'd like to have
3 Inalytics do that, and they expect us to answer the questions
4 that Inalytics are going to put to us.

5 MR. JOHNSTON: You can take this down.

6 **Q.** Was Inalytics eventually hired?

7 **A.** Yes, they were.

8 **Q.** At whose expense?

9 **A.** State Street's expense.

10 **Q.** Were any requests for information made of you?

11 **A.** Yes. Yeah, there were several requests, but there was
12 one main email that had 14 or 17 points of different detail
13 that they requested.

14 **Q.** Did you provide all of that information?

15 **A.** Not all at once, no. And certainly some of it took an
16 awful long time for us to provide.

17 **Q.** Did you consult with anyone prior to choosing which
18 information to hand over and which information to withhold?

19 **A.** Yeah. When that request came in, we went through it in a
20 lot of detail with Ed and Ross as to how and what we were
21 going to provide. It was instructed that I would be the one
22 that would handle the communications with Inalytics because I
23 knew Graham so well, I knew Rick well. So that was my role.

24 But in terms of what was going to be going back,
25 some of the information we were more than happily and easily

1 readily available for us to send over to them, and my
2 instruction was to start getting that noncontentious,
3 non-cover-up information over to them.

4 **Q.** What information -- what, if any, information were you
5 told not to turn over?

6 **A.** There were, I guess, a couple of pieces. One was the
7 European executions that we had done in the market. So the
8 market-side executions that I had spoken about just a few
9 minutes ago.

10 Secondly, there was a request for sign-off from
11 compliance that the amount of money that had been paid back
12 was fully representative of the amount that was due back to
13 them; and that in the view of compliance this wasn't a
14 regulatory breach in any way; and that was the sum total of
15 remuneration that State Street had gotten.

16 **Q.** Breaking that down a bit, who told you not to provide the
17 street-side executions?

18 **A.** Ed and Ross.

19 **Q.** What about the compliance letter?

20 **A.** The compliance letter was the one bit that wasn't in my
21 remit. Ross said that he and Ed would take care of that one.

22 **Q.** Could you tell us who compliance is at State Street?

23 **A.** Yeah. I mean, compliance, sits kind of with the legal
24 department but sits on the -- generally on the trading
25 floors. And their job is to make sure that we remain

1 compliant with the trading rules, regulations, all of those
2 things. So, you know, they're there for answering questions,
3 also to make sure that we're doing things in the proper way.

4 **Q.** What was your understanding of why Graham Dixon wanted a
5 compliance letter?

6 **A.** He wanted to ensure that the internal compliance at State
7 Street had taken a look at this issue. He hadn't seen any
8 proof up to that point that compliance had been involved, and
9 he wanted to make sure that they had been.

10 **Q.** Was it typical for compliance to be involved in things
11 like this?

12 **A.** I mean, we had never had a thing like this before, I
13 guess, so it's difficult for me to say what's typical. But
14 given that there was, you know, these client issues and
15 client questions, then, yes, it would be regular for
16 compliance to be involved.

17 **Q.** In your mind, did this request for a compliance letter
18 pose any problems?

19 **A.** Yeah. It posed some big problems because what he was
20 asking us to attest in the way that we had told them that
21 this was a U.S.-only problem, you know, that simply wasn't
22 true. So compliance was either not going to be able to write
23 that letter or it could only write that letter on misguided
24 information.

25 **Q.** Did someone from compliance get involved to write a

1 letter?

2 **A.** Yeah, there were several people from compliance involved.
3 I mean, eventually the letter was to come from Mark Hansen,
4 who was the head of compliance on a global basis for our
5 business.

6 **Q.** Where was Mark Hansen based at the time?

7 **A.** He was based in Boston.

8 MR. JOHNSTON: Can we take -- could I actually show
9 a exhibit to the witness, Exhibit 180?

10 THE COURT: Yes.

11 **Q.** Let's take a look at the top part. Do you recognize this
12 email, Mr. Boomgaardt?

13 **A.** Yes.

14 **Q.** What's the dates?

15 **A.** 22nd of August, 2011.

16 **Q.** Who is this email from?

17 **A.** It's from Ross McLellan.

18 **Q.** Who is it to?

19 **A.** To Ed Pennings and myself.

20 **Q.** And who is copied on this email?

21 **A.** Mark Hansen.

22 MR. JOHNSTON: Your Honor, at this time the
23 government moves to admit Exhibit 180.

24 MR. WEINBERG: No objection.

25 THE COURT: Admitted. You can publish it.

1 (Exhibit No. 180 admitted into evidence.)

2 **Q.** Let's look at this, Mr. Boomgaardt. Directing your
3 attention to where it says "Can you send all the U.S.
4 street-side trades for Royal Mail and what was booked to
5 client," what's he asking you to -- what's your understanding
6 of what he's asking you to do here?

7 **A.** He's asking me to send both the executions that we did in
8 the market and what we booked to the client. So to Mark
9 Hansen for the U.S. trades.

10 **Q.** Continuing, "I spoke to Mark so he is aware this is
11 coming. We need to prove to the client that we have rebated
12 them the correct amount of funds."

13 At this point, had you rebated them the correct
14 amount of funds?

15 **A.** For the U.S. trades we had rebated them the correct
16 amount of funds, but we had made no mention of the spreads in
17 Europe.

18 **Q.** Had you told Mark Hansen that you had taken remunerations
19 in Europe?

20 **A.** No. I hadn't had any conversation with Mark Hansen at
21 that point.

22 **Q.** Do you know whether Ed or Ross had told Mark Hansen about
23 the European commissions?

24 **A.** I don't know. I had seen no evidence that they had, but
25 I don't know.

1 MR. JOHNSTON: You can take this down.

2 Q. What was your understanding of why the U.S. trade
3 executions needed to be sent to Mark Hansen?

4 A. Because Ross was working with Mark Hansen on trying to
5 get this compliance letter. That was my assumption as to why
6 he wanted to see those things.

7 Q. Were you asked to send the European executions to Mark
8 Hansen?

9 A. No. Only the U.S. ones.

10 Q. Did you have an understanding at the time why you weren't
11 being asked to send the European executions?

12 A. That, my understanding at the time was that we weren't
13 sending the European executions because we hadn't told
14 anybody about the European commissions that we had taken,
15 including internally.

16 Q. Including the chief of compliance?

17 A. Yeah.

18 Q. Let's take a look at -- before we do, was this letter
19 eventually written?

20 A. It was eventually written, yes, and signed.

21 Q. Who signed it?

22 A. Mark Hansen signed it.

23 Q. Do you know who wrote the content in the letter?

24 A. The first draft I believe was words put together by Ed
25 Pennings. It did make its rounds around various compliance

1 people and was edited before the final version came out, I
2 believe.

3 **Q.** Do you know who edited it?

4 **A.** Compliance certainly did. I don't know who else. It
5 changed slightly in form. Again, it was kind of the one bit
6 of all the things that Inalytics requested that I was least
7 involved in preparing.

8 **Q.** Who was ultimately tasked with sending it to Inalytics?

9 **A.** I was tasked with sending it to Inalytics, as I was the
10 one that was responsible for the communications with them.

11 **Q.** Who asked you to send it to Inalytics?

12 **A.** Ross did.

13 MR. JOHNSTON: Let's take a look at, just to the
14 witness, Exhibit 188.

15 **Q.** Do you recognize this email Mr. Boomgaardt?

16 **A.** Yes, I do.

17 **Q.** What is it?

18 **A.** It's an email from Ross to myself.

19 **Q.** What's the subject line?

20 **A.** Inalytics letter.

21 **Q.** Is there an attachment to this email?

22 **A.** There is an attachment, yeah.

23 **Q.** Do you know what that attachment is?

24 **A.** I believe it's the copy of the signed letter from Mark
25 Hansen.

1 **Q.** Do you know why Mr. McLellan is forwarding you this
2 email?

3 **A.** To send it on to Graham Dixon at Inalytics.

4 MR. JOHNSTON: Your Honor, at this time the
5 government moves to admit Exhibits 188 and 188.1.

6 MR. WEINBERG: No objection.

7 THE COURT: Admitted.

8 (Exhibit No. 188 and 188.1 admitted into evidence.)

9 MR. JOHNSTON: Let me zoom in on the bottom two
10 emails first.

11 **Q.** Looking at the bottom email from Mark Hansen to these
12 various individuals, what is it that he's asking you and
13 others to do here in the bottom email?

14 **A.** To review the letter and ensure that all the information
15 he has is correct.

16 MR. JOHNSTON: Can we go to the top, please?

17 **Q.** Was there any other -- did you have any conversations
18 with Ross that day about this letter?

19 **A.** Yeah. There was a phone call between Ross and I where he
20 told me to send that off to Graham.

21 MR. JOHNSTON: Let's take a look at the letter,
22 188.1. We can first zoom in at the top, the subject or the
23 addressee line and then down to the bottom to the signature
24 line. And then let's take a look at the actual content.

25 **Q.** Mr. Boomgaardt, what, if anything, is true in this

1 letter?

2 MR. WEINBERG: I object to the question, Your
3 Honor.

4 THE COURT: Well, as to his understanding.

5 MR. WEINBERG: That's a different question.

6 THE COURT: It is.

7 **Q.** In your understanding, what, if anything, is true in this
8 letter?

9 **A.** Graham's name, address, and telephone number. You know,
10 the rest of it is incorrect and actually lying in some
11 places.

12 **Q.** All right. Let's take a look. So when the first
13 paragraph says, "With regards to your recent request on
14 behalf of Royal Mail Pensions Trustees Limited and
15 correlating performance analysis of State Street Global
16 Markets Portfolio Solutions execution, please consider this
17 letter a confirmation regarding the accuracy of the
18 previously provided compensation amount of \$1,010,003.67."

19 Is that the accurate amount of compensation?

20 **A.** It's the accurate amount of compensation that we had paid
21 them back, and it is accurate for the U.S.-only portion of
22 the transition but makes no mention of the fact that the
23 same -- that undisclosed commissions were taken on other
24 trades as well.

25 **Q.** Let's go further down. "Portfolio Solutions has

1 conducted a thorough review of the fixed-income transactions,
2 whether TRACE eligible or otherwise, executed on behalf of
3 RMPTL. In accordance with this analysis as well as my
4 independent review of the information therein, I can hereby
5 confirm the accuracy of the compensation amount referenced
6 above."

7 What's your understanding of the phrase "whether
8 TRACE eligible or otherwise"?

9 **A.** Well, TRACE was the trade reporting system in the U.S.
10 that I had mentioned earlier for some of the bonds, but
11 "TRACE eligible or otherwise" would mean all of the bonds in
12 the transition.

13 There's no mention of North American bonds or
14 U.S.-traded bonds or anything else. It says "TRACE eligible
15 or otherwise," and "otherwise" would include everything that
16 we traded that's not TRACE eligible, including everything in
17 Europe.

18 **Q.** So then what's your understanding of why this phrase was
19 included in the letter?

20 **A.** To be -- to make the client think that they had done the
21 analysis on the European or non-U.S. trades as well.

22 **Q.** Had Mr. Hansen done any independent review of the
23 information therein?

24 MR. WEINBERG: I object.

25 THE COURT: Sustained as to foundation.

1 **Q.** What was your understanding of whether Mr. Hansen had
2 done any independent review?

3 MR. WEINBERG: Object, unless there's a foundation.

4 THE COURT: Sustained.

5 **Q.** Who, if anyone, had been asked to provide the information
6 necessary to do an independent review to Mr. Hansen?

7 **A.** I hadn't been asked to provide any information for any of
8 the trades outside the ones that had been done in the U.S.
9 It certainly wasn't obvious to me that there had been any
10 independent review of anything other than the U.S. trades.

11 **Q.** What, if any, information did you give to Mr. Hansen?

12 **A.** I didn't give any information to Mr. Hansen other than
13 the U.S. executions that I had been asked to provide by Ross.

14 **Q.** Do you have any knowledge whether Mr. Hansen
15 independently obtained the European street-side executions?

16 **A.** Not to my knowledge.

17 **Q.** And then directing your attention to the last sentence or
18 the last sentence of this paragraph, "In addition, please
19 note that State Street Global Markets considers this issue to
20 be an unfortunate error and not a breach of any applicable
21 regulations."

22 Had these commissions been an unfortunate error?

23 **A.** No. No, they had been a -- it was a deliberate plan to
24 take an undisclosed commission. It was not an error in any
25 sense of the way -- any sense of the word, except possibly

1 moral judgment.

2 **Q.** Did you send out this letter?

3 **A.** No, I didn't.

4 **Q.** Why not?

5 **A.** I couldn't -- I couldn't send out that letter because I
6 thought it contained inaccurate information. I was being
7 asked to lie, to lie to clients, lie to somebody I respected.
8 And in the name of our head of compliance, it was asking me
9 to directly lie, and it wasn't something I was prepared to
10 do.

11 **Q.** Why is that lie any different from any of the other lies
12 you told?

13 MR. WEINBERG: I object.

14 THE COURT: What's the objection?

15 MR. WEINBERG: It asks for a subjective conclusion
16 about why, it's irrelevant, Your Honor.

17 THE COURT: The question is then why is this lie
18 different from the other lie?

19 MR. WEINBERG: Yes, it's more philosophic than
20 legal.

21 THE COURT: Rephrase the question, about why did
22 you do this. What did you do, and why did you do it?

23 MR. JOHNSTON: Yeah.

24 **Q.** Mr. Boomgaardt, you've testified so far that you have
25 lied to clients in executing these transitions.

1 **A.** That's correct.

2 **Q.** You testified that this letter to you also felt like a
3 lie, correct?

4 **A.** Correct.

5 **Q.** Did this lie feel any different than the ones you had
6 previously done?

7 **A.** It did. It was a -- the other lies were no less
8 egregious than this one, but this is a direct, boldface, I am
9 lying to your face, I'm lying to your face in the name of our
10 head of compliance who signed this letter. So it wasn't just
11 me lying. It's me lying on behalf of our head of compliance
12 as well.

13 It's different or it was different in my head to
14 selling something to a client and then doing something
15 different. Equally lies, but this is -- to me, this was a
16 step too far and something I couldn't do.

17 **Q.** So what happened that evening after you had received this
18 letter from Ross McLellan?

19 **A.** I didn't send it. I had a conversation -- so Ed Pennings
20 was away at the time. He wasn't somebody I could have a
21 conversation with because he wasn't there. I was feeling
22 pressured and worried.

23 MR. WEINBERG: Objection. That's not the question,
24 Your Honor. The question is what did he do.

25 THE COURT: Sustained. Just tell him what he

1 did -- what you did.

2 **Q.** Did you have a conversation with anyone?

3 **A.** I went to have a conversation with our head of
4 operations, who Ed and I had talked to before, about whether
5 we needed or whether market convention was to show
6 street-side prices to clients. And, you know, Ian had come
7 back and said no, it wasn't.

8 I went to talk to him again to say, "If a client at
9 the end of all of this stuff actually reports it to a
10 regulator and the regulator asks us for these executions, am
11 I right in saying that we would have to provide them?"

12 His answer to that was yes. And that was the end
13 of my conversation with him, but --

14 **Q.** Why were you going to the head of operations to ask about
15 the street executions?

16 **A.** Because I had concerns about where the endgame of all of
17 this lying was going to get us, that if we continued to lie
18 and the client continues to not believe us or doesn't believe
19 us, do they have recourse to come and get this information
20 anyway.

21 You know, it was obvious to me that the only course
22 of action that we have is to come and tell the truth to all
23 of this stuff. I know it's a little bit late to start
24 telling the truth at this point, but continuing to lie is --
25 was unsustainable.

1 **Q.** What happened that evening after the conversation?

2 **A.** Well, I went home. Ian then had a conversation with
3 Marshall Bailey, I believe, who was our -- the chief
4 operating officer in Europe, unbeknownst to me. But they
5 bumped into each other and I think Ian expressed some concern
6 that I had seemed a bit agitated in that conversation.

7 **Q.** What happened the next morning?

8 **A.** Next morning I had an email from Marshall Bailey, asking
9 me if I had a second to pop by his office.

10 **Q.** Can you explain who Marshall Bailey was in the London
11 office?

12 **A.** Yeah, he was the chief operating officer, I guess, for
13 the global markets business in Europe. He was a fellow
14 Canadian and somebody who had been fairly new to the
15 business. He had only been in State Street for a few months.

16 **Q.** Why did he call you into the office?

17 **A.** I didn't know why he called me into the office. I sat
18 down. He said, you know, what's up?

19 And I used that as an excuse to tell him what was
20 up and what was going on and what my concerns were and to,
21 you know, ask for help with what was happening with Royal
22 Mail.

23 **Q.** What do you recall that you told Marshall Bailey at that
24 time?

25 **A.** I told him about the commissions that we had taken on

1 Royal Mail; the compliance letter that I believed to be --
2 believed to be incorrect; and, you know, why I was feeling
3 pressured and stressed; and, you know, asking for some
4 guidance on where we go with this.

5 **Q.** Did you mention both the European and American
6 commissions?

7 **A.** Yes.

8 **Q.** Why were you feeling so much pressure and stress?

9 **A.** Because we're lying to clients and I'm being asked
10 actively to lie to clients. And the -- you know, we had lied
11 to clients, and the strategy of continuing and adding to the
12 lie is not sitting well with me. It's causing me real, real
13 problems.

14 **Q.** What did Marshall Bailey instruct you to do at the end of
15 this conversation?

16 **A.** He instructed me essentially not to do anything, let him
17 deal with it, but don't send anything more out until I had
18 heard more from him.

19 **Q.** On that day, August 26, 2011, did you have a number of
20 calls with Ross McLellan and Edward Pennings?

21 **A.** Yes.

22 **Q.** I'd like to play you one of those calls, which has
23 already been admitted into evidence as Exhibit 193.

24 THE COURT: Which number?

25 MR. JOHNSTON: 193, Your Honor.

1 THE COURT: Thank you.

2 (Voice recording played.)

3 Q. Mr. Boomgaardt, who are you speaking with on this call?

4 A. Ross McLellan.

5 Q. Who is the reference, do you understand who "Marsh" is?

6 A. That's a reference to Marshall Bailey.

7 Q. Then directing your attention to line 10 where
8 Mr. McLellan says, "Yeah, well, I just talked to Ed and I
9 think what we are going to do is I'm going to reserve for the
10 two million bucks today in August."

11 What's your understanding of what Mr. McLellan
12 means there?

13 A. The two million bucks is roughly the commissions taken on
14 the European trades.

15 Q. And why do they have to be reserved today?

16 A. So that they could be paid back to the client.

17 Q. So up until then, the two million bucks hadn't been
18 reserved?

19 A. Not as far as I know, no.

20 (Voice recording played.)

21 Q. Mr. Boomgaardt, what do you understand Mr. McLellan to
22 mean when he says, "We'll just figure out a way to come clean
23 and save face with Graham," line 14 and 15?

24 A. That we have to find a way to manage what is a difficult
25 conversation. We're going to have to tell them that we have

1 taken this money in Europe as well and at the same time try
2 and salvage our reputation. So we need to find a way to do
3 that without making this look like we did exactly what we
4 did.

5 (Voice recording played.)

6 **Q.** Mr. Boomgaardt, turning your attention to the top of
7 page 22, what do you understand Mr. McLellan to mean when he
8 says, "We are not going to give them a dime back in the
9 future, so if it's disclosed and he didn't negotiate it,"
10 what's he referring to?

11 **A.** I think it should be "futures" with an "s" on the end.

12 So there were some questions that Inalytics had
13 around the hedging program that we had put on this. So the
14 use of financial futures, so a derivative instrument in this
15 transition as well.

16 There was a separate agreement to use futures, and
17 we charged both for execution and for the clearance or the
18 safe-keeping of these futures contracts as well. There was
19 questions around that as well but a very separate issue from
20 the undisclosed commissions that we're talking about on the
21 bond trades.

22 **Q.** So when you're -- or when he's referring to a future and
23 if it's disclosed, what is that in reference to? Why is
24 there a concern about that at this point?

25 **A.** Because the futures commissions are disclosed to the

1 client, how much we're going to charge for the service of
2 using those futures, telling them that we're going to be
3 charging commissions on those. It's disclosed, whereas the
4 bond trade commissions are not disclosed. So hence why we
5 are reserving for them and preparing to pay them back.

6 **Q.** So the futures were in the contract is what you're
7 saying?

8 **A.** Yes.

9 **Q.** But the commissions weren't?

10 **A.** Correct.

11 (Voice recording played.)

12 **Q.** Mr. Boomgaardt, what's your understanding of what
13 Mr. McLellan is saying at line 10 when he goes, "I'm going to
14 talk to Hansen this morning and say here is the situation. I
15 talked to Ed. Ed said we are perfectly clean by the
16 contract."

17 **A.** Well, a couple of things, one, that he's going to talk to
18 Mark Hansen in compliance and tell him, I guess, where we
19 really are and that there was European spreads taken on these
20 as well.

21 I'm not sure what he's implying there. But talked
22 to Ed, yeah, Ed said the contract allowed us to take the
23 spreads. I mean, it's perfectly clear. It didn't allow us
24 to tell the clients we weren't going to take commissions and
25 take them anyway or to lie about it. So it's a bit of a moot

1 point, that one.

2 **Q.** What did you think at the time?

3 **A.** That this was the justification that we had used.

4 Hearing that we'd only looked at the contract at 4:00 in the
5 morning after the client had complained was news to me, given
6 this had been purported to have been okay by legal and
7 compliance when we were doing it in the first place. So it's
8 not --

9 **Q.** Who had told you that? Who had told you that this had
10 been reviewed by --

11 **A.** Ed and Ross had both told me that it had been reviewed
12 and okayed by legal and compliance and senior management.
13 This conversation isn't consistent with that having happened.

14 **Q.** Do you know what, if anything, Ed or Ross told those
15 other people?

16 **A.** I don't.

17 **Q.** Were you present for any such conversations?

18 **A.** No, I wasn't.

19 (Voice recording played.)

20 **Q.** Mr. Boomgaardt, what's your understanding of what
21 Mr. McLellan is asking for when he says, "Send over the RFP"?

22 **A.** He wants to see what was promised to the client in that
23 proposal we put forward.

24 **Q.** So that the proposal that we were looking at just earlier
25 this morning?

1 **A.** Yeah, yeah, that's right.

2 **Q.** And what do you understand him to say or to mean when he
3 says, "I just want to make sure we didn't make any
4 representations that we don't take spreads"?

5 **A.** That there wasn't anything overtly stated in there that
6 we don't take spreads, you know, there's no question that --

7 MR. WEINBERG: I object to anything beyond the
8 answer to that question.

9 THE COURT: Sustained.

10 **Q.** Had you made other representations in the RFP and in
11 negotiations with the client?

12 **A.** Yes.

13 **Q.** And what were those representations?

14 MR. WEINBERG: Object. It's been asked and
15 answered and gone over, Your Honor.

16 THE COURT: It has been asked and answered. But in
17 this instance briefly you can go into it. Overruled.

18 **A.** Well, we had told them that the flat fee we were planning
19 to charge was in lieu of commission and there wouldn't be any
20 commissions charged on their bond trades.

21 **Q.** Are commissions the same as spreads?

22 **A.** Yes. Yeah, they're synonymous.

23 **Q.** Did you have additional calls with Mr. McLellan that day?

24 **A.** Yes.

25 **Q.** I'd like to play you the next one, which is Exhibit 196.

1 (Voice recording played.)

2 **Q.** Mr. Boomgaardt, who are you speaking with on this call?

3 **A.** That is Ross McLellan and Ed Pennings.

4 **Q.** What do you understand Mr. Pennings to say on line 9
5 with, "So the letter from Hansen has not gone out yet"?

6 **A.** He wants to make sure that we haven't sent that, that
7 it's -- that we haven't gone ahead with that part of lying to
8 the client.

9 MR. WEINBERG: I object, Your Honor. It's one
10 thing to ask what is said --

11 THE COURT: Sustained as to the lying part.
12 Disregard that, ladies and gentlemen. Next question.

13 **Q.** Whose decision had it been to not send the letter out?

14 **A.** Mine.

15 **Q.** What was the last instruction that you had been given?

16 **A.** To send it out.

17 MR. JOHNSTON: Let's continue this.

18 (Voice recording played.)

19 **Q.** Mr. Boomgaardt, what do you understand Mr. McLellan to
20 mean when he says, "It's pretty crystal clear to me after
21 reading the RFP that we don't have a leg to stand on here
22 once we all see what went on here"?

23 **A.** Well, that we made the -- we told them in the RFP that we
24 weren't going to charge commissions and we did anyway. So
25 we've -- you know, we've lied to them and done it anyway.

1 **Q.** Had the representations in the Royal Mail RFP differed
2 from representations generally made in your business as a
3 State Street transition manager?

4 **A.** No. No. They were very consistent with everything else,
5 the way we present ourselves in the market.

6 MR. JOHNSTON: So let's continue, please.

7 (Voice recording played.)

8 **Q.** Mr. Boomgaardt, directing your attention to page 2 where
9 Mr. McLellan says, "I do think we should message to Graham
10 sooner rather than later, particularly today, that we may
11 have the same booking issue in the U.K. as we do in the
12 States. We haven't confirmed that yet and compliance and
13 audit is looking into it."

14 What do you understand Mr. McLellan to be
15 suggesting?

16 **A.** That we told Graham further lies about what it is that's
17 happened here. It's not a -- it wasn't a booking issue in
18 the U.K. It wasn't a booking issue in the U.S. It has been
19 confirmed. We know we took an undisclosed commission here.
20 So it's -- you know, the proposition is to kind of tell them
21 there might be something going on but still in a way that's
22 not being truthful about it.

23 **Q.** Who was going to have to message that to Graham?

24 **A.** Well, it's -- I guess in an unwritten way, I guess me.
25 But it's not clear who is going to be making that

1 conversation or having that conversation with Graham.

2 **Q.** And then further down where -- line 21 to 23 where
3 Mr. McLellan says, "From my point of view, I think we should
4 discuss who is messaging what to where. Because I mean, at
5 the end of the day here, you know, it's crystal clear, we've
6 got to give the money back," what do you understand
7 Mr. McLellan to be saying?

8 **A.** That we -- what we told the client and what we did are
9 two very different things, so we have to pay them that money
10 back. We weren't entitled to take it in the first place.

11 **Q.** And what do you understand the term "messaging" to mean?

12 **A.** Well, as I said, this is an uncomfortable conversation.
13 So how do we salvage our reputation on that. You know, one
14 solution is to continue lying about it. That's one way to
15 message it. Another way would to be completely truthful
16 about it. But I don't know. It's not clear what that
17 message is.

18 (Voice recording played.)

19 **Q.** Mr. Boomgaardt, directing your attention to the comment
20 from Mr. Pennings beginning on line 13 where he says, "I
21 mean, basically we need to just message it internally that,
22 look, this is nothing else than like what we do in FX,"
23 what's your understanding of what Mr. Pennings is saying
24 there?

25 **A.** He's trying to analogize, so compare the taking of these

1 undisclosed commissions with the way that State Street
2 conducts its foreign exchange business. Both are potential
3 other sources of remuneration for the bank, but they're very,
4 very different in the way that they collect their money.

5 FX --

6 MR. WEINBERG: I object to anything beyond what he
7 understands Mr. Pennings said rather than an opinion on FX.

8 THE COURT: Sustained.

9 Q. Did you agree with Mr. Pennings' statement at the time?

10 A. No. But I had certainly heard it before as a
11 justification for why we did this.

12 Q. And what was your understanding of what the justification
13 was?

14 A. That it's -- that somehow this is analogous to what we do
15 in FX, that they're both in some ways principal, although
16 one's risk with principal and one is with risk, so the FX
17 desk does take risky positions. They can make or lose money.
18 The way we're taking our undisclosed commissions, there is no
19 way we're losing any money on that. It's a riskless way to
20 make money.

21 Q. In your negotiations with any of the clients that we've
22 spoken about during your testimony, were there any
23 negotiations about FX?

24 A. No.

25 Q. Did you have any control over what the FX prices were?

1 **A.** No.

2 **Q.** Did you ever -- did you make any representations, one way
3 or the other, about how FX would be done?

4 **A.** Well, no. If we were asked, we would tell them that FX
5 was done with our State Street trading desk and that we
6 targeted the 4:00 close for those prices. That was the
7 extent of those conversations normally.

8 **Q.** Did you know how much money the State Street FX desk made
9 from any of the trades you sent their way?

10 **A.** No.

11 **Q.** So then when Mr. Pennings says "We just need to message
12 it internally," what do you understand the significance of
13 "internally" to be?

14 **A.** That legal and compliance are going to be looking into
15 this now. We need to get them comfortable that what we're
16 doing is no different than what they're already comfortable
17 with in our FX business.

18 It's again a way to try and justify what we've
19 done, in some way to make it okay. I mean, even if it's the
20 same as FX, the fact that we've told them we weren't going to
21 do it and did it anyway is the big point.

22 MR. WEINBERG: I object, Your Honor. I'd like an
23 instruction to the witness --

24 THE COURT: Mr. Boomgaardt, you just answer the
25 question. If counsel wants to ask you more, he'll ask you

1 more. Just listen to the question. Just go as far as the
2 question, and then you stop and wait for the next question.

3 THE WITNESS: Sorry, Your Honor.

4 THE COURT: Go ahead.

5 **Q.** Let's take a look at the lines below for Mr. McLellan
6 where he says, "Well, I've already put it this way. Let me
7 handle that. I have already talked to David about it. I
8 left a call message for Marsh Bailey. I've sent an email to
9 John Norris."

10 Who are those people? Do you have an understanding
11 of who they are?

12 **A.** My understanding is that David is David Puth, so the head
13 of the global markets business globally. Marshall Bailey is,
14 as we've talked about. John Norris is a member of the legal
15 department in London and the one who I guess we worked most
16 closely with on legal agreements and things for transition
17 management.

18 **Q.** Are these all executives at State Street?

19 **A.** Yes.

20 **Q.** How senior?

21 **A.** Well, David Puth is as senior as it gets in global
22 markets. Marshall Bailey, again, had sort of pan-European
23 responsibility for the business as a whole from an operations
24 CEO role, and John Norris was a fairly senior lawyer in
25 London.

1 Q. What, if anything, had Mr. McLellan led you to believe
2 about these executives' knowledge of this conduct?

3 MR. WEINBERG: I object to this "led you to
4 believe." If he wants to ask what Mr. McLellan said to
5 Mr. Boomgaardt, I have no objection.

6 THE COURT: Sustained.

7 Q. What, if any, conversations did you have prior to this
8 phone call with Mr. McLellan about these executives and the
9 practice that you were doing?

10 A. Both Ed and Ross had told me that this had been approved
11 by European management, so I guess that would include Marsh
12 Bailey as well as global management, which would include
13 David Puth. Ross told me that had been raised with David
14 before, and Ed certainly told me it was raised with legal and
15 compliance, which would include John Norris. So my
16 expectation was that these people would have already known
17 about this rather than this being the first they heard of it.

18 MR. WEINBERG: I object to the conclusion "this is
19 the first they heard of it." There's nothing in the tape to
20 indicate that. It's simply Mr. Boomgaardt --

21 THE COURT: Sustained as to that.

22 Q. What was your understanding of what Mr. McLellan was
23 informing David Puth, Marshall Bailey, and John Norris about?

24 MR. WEINBERG: I object if it's speculation, Your
25 Honor. The words speak for themselves, and the understanding

1 is -- it's just conclusions.

2 MR. JOHNSTON: Your Honor, if I may?

3 THE COURT: You can have that question. Overruled.

4 You can give us your understanding of those
5 sentences that Mr. McLellan -- that are recorded in the
6 transcript on the tape.

7 **Q.** Mr. Boomgaardt, what was your understanding of what
8 Mr. McLellan was saying he was informing David Puth?

9 THE COURT: No. What was your understanding of
10 what Mr. McLellan said.

11 MR. JOHNSTON: Sure.

12 **A.** That he had a conversation with David Puth. I don't know
13 the full extent of that, but to tell him that we've got a
14 client issue.

15 MR. WEINBERG: I object if he doesn't know what the
16 conversation was about. Otherwise, it's just speculation.

17 THE COURT: Sustained.

18 MR. JOHNSTON: Let's continue.

19 (Voice recording played.)

20 **Q.** Mr. Boomgaardt, what's your understanding of what
21 Mr. Pennings is saying here when he says, "I think what we
22 need to say is, look, to be honest, we have no reason to
23 believe in Europe that it was anything else"?

24 **A.** It's another attempt to come up with a lie to try and
25 save face. It's not accurate; it's not true.

1 **Q.** What's your understanding of who this letter would be
2 directed to?

3 **A.** Well, I think he's referring to the compliance letter
4 that is to go out to the client. A new compliance letter to
5 replace the one that I hadn't sent.

6 MR. JOHNSTON: Continue.

7 (Voice recording played.)

8 **Q.** Mr. Boomgaardt, what's your understanding of what
9 Mr. Pennings is saying when he says, "The only thing that we
10 are guilty of, as far as I'm concerned, legally, is that --
11 not legally -- is that we are not transparent. That is what
12 they can accuse us of"?

13 **A.** He's saying that there is a clause in the contract that
14 says we're okay to take these commissions. We didn't tell
15 them about it, so we're not really being transparent about
16 how much money we made here, but we haven't really done
17 anything wrong.

18 **Q.** Why do you say "I'm not so sure about that"?

19 **A.** Because we told the client we weren't going to do it, and
20 we did it anyway. It's not a -- it's not just a contract
21 issue, in my view.

22 (Voice recording played.)

23 **Q.** Mr. Boomgaardt, what's your understanding of
24 Mr. McLellan's statement, "It is silent with respect to any
25 of this. It doesn't say you can't do it, it doesn't say you

1 can do it"?

2 **A.** Well, that the contract doesn't specifically say that we
3 can or can't take undisclosed commissions. That doesn't make
4 me feel any better.

5 **Q.** And why is it -- what's your response? On the next page,
6 on the top of page 5.

7 **A.** My response, I've obviously gone back and dug up the
8 contract prior to this call. And my reading of the contract
9 is different, that that section that Ed is pointing to about
10 affiliates being able to take a markup is -- has a proviso
11 before it that says only if the execution isn't any worse
12 than if that conflict hadn't existed, i.e. that you're
13 trading with your affiliate.

14 **Q.** Had the conflict -- had the execution been better or
15 worse?

16 MR. WEINBERG: I object, Your Honor.

17 THE COURT: What's the objection?

18 MR. WEINBERG: No basis.

19 THE COURT: Sustained just as to foundation.

20 **Q.** What execution? What deal are you speaking about in this
21 call?

22 **A.** Royal Mail.

23 **Q.** Did you participate in that deal?

24 **A.** Yes.

25 **Q.** Did you prepare the post-trade analysis?

1 **A.** Yes.

2 **Q.** Did you have a view at this time of whether the execution
3 was good or bad?

4 **A.** It wasn't as good as it could be because we put a -- we
5 had put an undisclosed commission on it. It would have been
6 a lot better if we had given them the prices that we had
7 executed in the market as we agreed to do.

8 (Voice recording played.)

9 **Q.** Mr. Boomgaardt, what do you understand Mr. Pennings to
10 mean when he refers to Pestana?

11 **A.** Pestana was Raymond Pestana, who was one of my transition
12 analysts that had worked for me who had left and gone to a
13 different transition management provider.

14 **Q.** And why is he coming up in the context of this
15 conversation?

16 **A.** It was Ed's suspicion that Raymond had somehow tipped off
17 the client and told him to look at these TRACE records as
18 proof that State Street was doing something they shouldn't
19 have been.

20 **Q.** What did you mean when you responded, "Different issue
21 because, you know, we have got a tip-of-the-iceberg issue
22 here as well"?

23 **A.** Well, it's irrelevant whether it's Pestana or anybody
24 else, that the client is aware of this stuff, and this
25 isn't the only deal we've done this on, right? There's a few

1 others that we've got the exact same issues with.

2 **Q.** Then when you say, "Does it then still get raised at a
3 different level," what are you referring to?

4 **A.** I mean, if we go back and Inalytics and the client don't
5 like our answers, they still have a recourse to go to the
6 FSA, which is the securities industry regulator in the U.K.,
7 so the U.K. equivalent kind of of the SEC I guess.

8 **Q.** What if any concern do you have --

9 **A.** Well, the FSA at that point can, you know, fine banks,
10 fine individuals, bar individuals. But they can request to
11 see whatever information they want to, and we would be
12 obliged to show it to them. So we are going to have to be,
13 if we follow this to its logical conclusion, 100 percent
14 transparent in everything we're doing at some point.

15 (Voice recording played.)

16 **Q.** Mr. Boomgaardt, I just want to direct your attention to
17 what Mr. McLellan says in lines 15 through 18. What's your
18 understanding of what he's saying there?

19 **A.** Again, he's pointing to the same clause that Ed had
20 pointed out to the contract, that somehow it's okay by the
21 contract to take a commission markup, markdown, or an
22 affiliate of the transition manager can take that markup or
23 markdown. Again, I guess we've gone through that, but it
24 doesn't allow us to tell them we're not going to and do it
25 anyway.

1 **Q.** What's your response?

2 **A.** Again, to point out that there's a proviso before all of
3 that conflict of interest section in the contract that says
4 all of it has to be so that the client isn't materially worse
5 off than they would be if that conflict hadn't existed.

6 **Q.** So even apart from the oral statements?

7 **A.** Yeah. I mean, it's -- you know, the -- like I said, the
8 contract is only one part of it.

9 (Voice recording played.)

10 **Q.** Mr. Boomgaardt, what do you understand Mr. McLellan to be
11 saying when he says, "Where that does help us is internally.
12 Look, we put that in there because we know we take spreads on
13 fixed income and our customary spread is in the form of basis
14 points of yield"?

15 **A.** I don't know exactly how to read that. It seems as
16 though it's --

17 MR. WEINBERG: I object, Your Honor.

18 THE COURT: That's fine. If you don't know how to
19 read it, you don't know how to read it. Next question.

20 **Q.** Mr. Boomgaardt, at the time you worked at State Street
21 from 2010 to 2011, was it customary in the transition
22 business, in your transition business at State Street, to
23 take --

24 MR. WEINBERG: Judge, I hate objecting, but this is
25 so leading.

1 THE COURT: Sustained as to the form.

2 Q. How did you charge clients at this time?

3 A. Normally for transitions we would charge them on a basis
4 point of yield basis, an agreed basis point of yield basis
5 for bond transactions.

6 THE COURT: Do you see the difference between a
7 non-leading question, how did he charge? Ask the question,
8 the witness answers, you hear the testimony from the witness.
9 The witness is the one with personal knowledge. The
10 witnesses were there. None of the lawyers were there, right?
11 They have a lawyer representing them. The leading questions
12 aren't presented in the same way. That's why on direct
13 examination, except on preliminary matters, certain kids
14 of -- to move it along, we have the direct questions because
15 it provides the witness's testimony.

16 Go ahead. Next.

17 Q. Was there a customary spread at this time?

18 A. It wasn't customary. It was customary for us to charge
19 it in the form of a basis point of yield, but there was no
20 set commission or a customary commission. It was on a
21 deal-by-deal basis.

22 Q. Agreed upon or --

23 A. Aside from the deals that we've talked about here,
24 previously agreed by the client.

25 Q. And what do you understand Mr. Pennings to be saying when

1 he says, "How do we explain the 2 basis point versus the
2 1 basis point"?

3 **A.** We charged 2 basis points of yield in Europe and only
4 1 basis point of yield on the U.S. executions. So again,
5 it's something else we're going to need to come up with a
6 story to explain somehow that doesn't fit into any of the
7 stories that we've come up with yet.

8 (Voice recording played.)

9 **Q.** Mr. Boomgaardt, what do you understand Mr. McLellan to be
10 saying when he says, "To avoid" -- on page 7, top of
11 page 7 -- "To avoid the tip-of-the-iceberg issue, and
12 Hansen's already mentioned it to me, how many other clients
13 do you have this issue with"?

14 **A.** That Ross has had that conversation with Mark Hansen
15 where he said, you know, are there other clients? How many
16 do you have this problem with? That's the tip-of-the-iceberg
17 issue that he's referring to. This is only one client; there
18 are others.

19 **Q.** Do you have an understanding of which clients he's
20 referring to?

21 **A.** The ones we've already discussed today and yesterday.

22 **Q.** Then directing your attention to where Mr. McLellan says
23 "Do we know if that is legal in the U.K.," what was your
24 understanding of --

25 **A.** My understanding was that we had already asked that

1 question and had a positive response from legal, that it was
2 legal in the U.K. I didn't know that there was any question
3 of whether it was legal in the U.K. or not. That was told to
4 me by both Ross and Ed. The fact that that question now
5 comes out was troubling.

6 MR. WEINBERG: I object. Move to strike anything
7 beyond the previous answer.

8 THE COURT: Beyond which previous answer?

9 MR. WEINBERG: Beyond the answer that ends with a
10 sentence and before the witness engages in speculation.

11 MR. JOHNSTON: Your Honor, he was testifying it's
12 his understanding.

13 THE COURT: It was his understanding of what it
14 was.

15 MR. WEINBERG: The understanding of a single
16 sentence, he said he understood legal had approved it.
17 Beyond that, Your Honor, it's not responsive to the question
18 nor to the dialogue here in the tape.

19 THE COURT: Overruled. Go ahead. You have to
20 stick just to the question.

21 **Q.** At this point, what was your understanding as to what
22 legal had approved up until these calls?

23 **A.** That they had approved -- that this had been brought up
24 with them and that the contract allowed us to -- to do this.
25 This plan had been brought up with and approved by legal.

1 **Q.** Did you believe that --

2 MR. WEINBERG: Objection.

3 THE COURT: Believe what when?

4 MR. JOHNSTON: At this time when he was in this
5 conversation, did he believe that legal had actually approved
6 what they had done.

7 MR. WEINBERG: I object.

8 THE COURT: What's the objection?

9 MR. WEINBERG: Speculative, relevance.

10 MR. JOHNSTON: Your Honor, his understanding is
11 vital.

12 THE COURT: His state of mind is relevant.

13 MR. WEINBERG: As to this at this point,
14 respectfully, no.

15 MR. JOHNSTON: Your Honor, one of the central
16 issues in this case is going to be whether he believed any of
17 this.

18 THE COURT: You can ask him whether he believed
19 that legal had approved it.

20 **Q.** Did you believe legal had approved what you had done?

21 **A.** No. I couldn't see a way that legal could approve of us
22 lying to clients.

23 **Q.** So what, then, was the limited thing that you did think
24 legal had approved?

25 **A.** The wording in the contract possibly.

1 (Voice recording played.)

2 **Q.** Mr. Boomgaardt, after this call, did you have additional
3 calls that day with Mr. McLellan?

4 **A.** Yes.

5 **Q.** I'd like to play you Exhibit 191.

6 (Voice recording played.)

7 **Q.** Mr. Boomgaardt, why do you say -- what do you understand
8 Mr. McLellan to be asking when he says, "You want to call me
9 up from an office"?

10 **A.** Because I was -- I worked in an open-plan trading floor.
11 People were sitting literally almost shoulder to shoulder
12 with me, so it was just to have a private conversation in
13 another room.

14 **Q.** Do you know whether the recordings -- or the phone lines
15 in the other rooms are recorded?

16 **A.** I don't think they are. I don't believe they are.

17 **Q.** Directing your attention to where Mr. McLellan says, "So
18 what do you think our game plan should be for here? And then
19 what I'm really concerned with, Rick, is protecting, you
20 know, your integrity with Graham and your integrity with
21 Royal Mail." What was your understanding?

22 **A.** Still trying to figure out how we message this thing. We
23 haven't come up with an answer on that yet. And he's saying
24 that part of that plan has to be for a way to -- for me to
25 maintain my integrity and market reputation with both

1 Inalytics and Royal Mail.

2 **Q.** What had the defendant asked you to send to Mr. Dixon the
3 day before?

4 **A.** A compliance letter signed by -- a letter signed by the
5 head of compliance that he and I both knew contained lies.

6 MR. WEINBERG: I object. Testify to what he
7 believed, not to what Mr. McLellan believed.

8 THE COURT: Sustained as to what Mr. McLellan
9 believed.

10 **Q.** Did you have additional calls after this with --

11 **A.** Yes, yes.

12 MR. JOHNSTON: Exhibit 195, please.

13 (Voice recording played.)

14 **Q.** What's your understanding, Mr. Boomgaardt, of what the
15 defendant is asking you when he uses the term "cover"?

16 **A.** He's looking at a report that we send to clients that
17 shows them the price they executed at. The cover is -- as we
18 say, we use a multi-dealer approach, so we ask for quotes
19 from lots of different dealers. The cover is the next
20 closest price to the best price that we dealt at. So if we
21 deal at the best price, the cover is the next one that is
22 closest to that but not dealt at.

23 **Q.** Why do you keep those records?

24 **A.** So that we can show clients that we've dealt for them at
25 the best price that we could find in the market.

1 MR. JOHNSTON: Please continue, please.

2 (Voice recording played.)

3 Q. Mr. Boomgaardt, what's your understanding of why
4 Mr. McLellan is asking you on line 16, "When you have given a
5 dealt price, that includes our markup, I guess, right"?

6 A. The only price the client is seeing is the price that
7 they had dealt at, so the client-side price. We're not
8 showing them any executions from what we actually did in the
9 market.

10 Q. What do you understand him to mean when he says, "If I
11 read all the communications right, I think you've done it the
12 exact right way"?

13 A. Well, in none of the communications have we shown them
14 market-side prices. We've only shown them client-side
15 prices.

16 Q. And who are you referring to? Like who are the clients?

17 A. That's for Royal Mail and Inalytics, so both of them
18 together.

19 Q. And when you say, "I mean, it's implicit in there, I
20 guess, that that's the street side as well," what do you mean
21 by that?

22 A. Well, I mean that the client will expect that we didn't
23 take a commission so they're -- they wouldn't expect there to
24 be any difference between client-side and street-side prices,
25 so their understanding would be those two things are the

1 same.

2 **Q.** Can you just explain maybe for the members of the jury
3 why there are two separate prices and why you believe they
4 would be the same?

5 **A.** Yeah, quite simply there's an execution that we do in the
6 market and then there's an execution that we do with the
7 client, and the difference between the two prices of those
8 things is the commission that State Street keeps. What we've
9 shown the client up to this point is only the executions that
10 we've done with them, not the underlying executions that
11 we've done in the market.

12 **Q.** So then why do you say it's implicit they're the same?

13 **A.** Because we had an understanding with the client that we
14 wouldn't be charging any commissions. So if there's no
15 commissions, the execution we do in the market is exactly the
16 same as the execution that we give to the client.

17 (Voice recording played.)

18 **Q.** Mr. Boomgaardt, what do you understand Mr. McLellan to be
19 referring to, or who do you understand him to be referring to
20 when he says "Mark"? Who is the person he's referring to
21 when he says, "Mark, look, we've never hidden it"?

22 THE COURT: Wait a minute. I don't understand the
23 question. Is the question who is Mark, in his understanding?

24 MR. JOHNSTON: Yes, in his understanding, who is
25 the Mark that Mr. McLellan is referring to.

1 **A.** Mark Hansen.

2 **Q.** Can you remind us who he is?

3 **A.** He's head of compliance.

4 THE COURT: Sustained. We know who Mr. Hansen is.
5 Next question. We've been talking about Mr. Hansen for the
6 last hour. I think the jury follows who Mr. Hansen is.

7 **Q.** What do you understand Mr. McLellan to be telling you
8 from lines 9 to 14?

9 **A.** Well, he's recounting a conversation that he's had with
10 Mark Hansen where he's told him that, you know, we've never
11 hidden the fact that we intentionally charged a markup. I
12 mean, if that's accurate, then he's lied to Mr. Hansen again.

13 MR. WEINBERG: I object, Your Honor. Move to
14 strike and ask Mr. Boomgaardt to be instructed --

15 THE COURT: Strike the part about it means that
16 he's lied to Mr. Hansen again.

17 You can testify to what the question is, to what
18 your understanding is. Mr. Boomgaardt can testify to what he
19 told Mr. McLellan. He can testify to what he gave
20 Mr. McLellan. He can testify to what Mr. McLellan said. But
21 as to what's inside Mr. McLellan's head is not something that
22 this witness can testify to. Go ahead.

23 **Q.** At the time did you agree with the statement that, "We
24 have never hidden the fact that we intentionally charged a
25 markup here"?

1 **A.** No. No, I didn't agree with that because we had
2 intentionally --

3 MR. WEINBERG: I object. The question is yes or
4 no. Once again, there's another --

5 THE COURT: Sustained. Just answer the question
6 yes or no. It was a yes-or-no question.

7 **Q.** Did you agree with that statement that, "We have never
8 hidden the fact that we intentionally charged a markup"?

9 **A.** No. No, I didn't agree.

10 **Q.** Why didn't you agree with that?

11 **A.** Because we told the client that it was a fat-finger
12 error, as an example. That's hiding the fact that we did it
13 intentionally.

14 (Voice recording played.)

15 **Q.** Mr. Boomgaardt, directing your attention to page 3,
16 lines 4, 5, and 6, when he says, "Look, I'm trying to keep
17 this to Ed and me. I said Ed and I discussed the agreement
18 and we basically said we have basically what we need to do to
19 charge a markup."

20 What's your understanding of what he's saying
21 there?

22 **A.** Firstly that he's trying to in some way shield me from
23 internal scrutiny on this and that he's -- still in the
24 context of talking to Mr. Hansen, that they've discussed the
25 contract and agreed that they had the legal basis to go ahead

1 and do that. To charge the markup, I mean.

2 **Q.** Prior to this conversation, had you had any other
3 conversations with the defendant about the agreement and who
4 had decided what it allowed?

5 **A.** Yes.

6 **Q.** What, if anything, had he represented to you prior to
7 this call?

8 **MR. WEINBERG:** Can we get some context, when, where
9 this conversation allegedly occurred?

10 **THE COURT:** Yes.

11 **Q.** When had you had these prior conversations with the
12 defendant about what the agreement did or did not allow?

13 **A.** We had that conversation across the course of the deals
14 that we've covered so far in my testimony here, that there
15 was a previous agreement and an okay that had come from
16 legal, rather than just from Ed and Ross's own reading, but
17 this had been done with the input of legal that it was okay
18 to take these and the contracts allowed the taking of these
19 types of commissions.

20 **Q.** And what's your understanding of what he's telling you
21 now?

22 **A.** That it was a decision that was made by him and Ed.

23 (Voice recording played.)

24 **Q.** Mr. Boomgaardt, directing your attention to the top of
25 page 4 where Mr. McLellan says, "You know, our desk operates

1 under this with most clients and, you know, we are going to
2 come aboveboard here even though we are not contracted to."

3 What's your understanding what he's telling you
4 there?

5 **A.** That this may be the message that we -- as part of the
6 message, another suggestion for what the message might be
7 that we go to clients, that this is the way that we do
8 business for lots of clients. In this case, we don't have to
9 contractually, legally, but we're going to pay the money back
10 to you, Mr. Client.

11 **Q.** Had you operated this way with most clients?

12 **A.** Not most clients, no. Only the ones that we've discussed
13 previously in my testimony here.

14 **Q.** Had you come back to Royal Mail with that answer, that
15 we're going to give you the money back but not contractually
16 to?

17 THE COURT: As of this call?

18 MR. JOHNSTON: As of this call.

19 **A.** No. No, we hadn't.

20 MR. JOHNSTON: Let's continue.

21 (Voice recording played.)

22 **Q.** Mr. Boomgaardt, directing your attention to where
23 Mr. McLellan says at the bottom of page 4, "On the futures,
24 we really don't have anything to hide, do we," what do you
25 understand him to be referring to?

1 **A.** The compensation, the question around the compensation
2 that we made on futures and our futures hedging strategy from
3 Inalytics. There was an agreement on futures commissions in
4 place with the client. We had told him them that, so there
5 was nothing to hide. It was explicit.

6 **Q.** And then when you say, "I mean there's nothing. There's
7 no secrets around it," what do you mean there?

8 **A.** It's explicit and agreed with the clients in contrast to
9 the undisclosed commissions which were not disclosed to the
10 clients and there is secrets around.

11 (Voice recording played.)

12 **Q.** In the days that followed August 26, did you have
13 additional discussions with Mr. McLellan?

14 **A.** Yes.

15 **Q.** I'd like to play you a call from August 30, 2011.

16 THE COURT: What number?

17 MR. JOHNSTON: This is Exhibit 197.

18 (Voice recording played.)

19 THE COURT: One thing that will speed it up, if you
20 want to ask him what his understanding of something is once
21 you've played it. I don't think you need to repeat it. I
22 think you can say what's your understanding of what was said
23 at lines 10 to 12.

24 MR. JOHNSTON: Okay.

25 (Voice recording played.)

1 **Q.** Mr. Boomgaardt, directing your attention to lines 21 and
2 22, what do you understand Mr. McLellan to be saying to you
3 there?

4 **A.** Again, that between him and Ed they're trying to protect
5 me in some way from the internal ramifications of all of
6 this.

7 (Voice recording played.)

8 **Q.** Directing your attention to line 5 and 6, what's your
9 understanding about this, what he's saying to you?

10 **A.** That again, going back to the client to say that there
11 are market-making businesses that can make revenue here. And
12 that is true from -- our foreign exchange business is a
13 market-making business, but there's no market-making business
14 on our transition desk in bonds. That's -- it wasn't a
15 market-making business that was taking the undisclosed
16 commissions on this.

17 **Q.** Then on lines 2 and 3, what do you understand
18 Mr. McLellan to be stating?

19 **A.** Just that we hadn't said we wouldn't take a spread in our
20 RFP.

21 **Q.** Who is the "he"?

22 **A.** The "he" he's referring to is John Norris in legal.

23 **Q.** And what's your understanding of what John Norris wants,
24 based on --

25 **A.** To find that we haven't made assertions or to see if we

1 have made assertions in that proposal about whether we would
2 or wouldn't be taking commissions on these trades.

3 **Q.** Had you made assertions?

4 **A.** Yes.

5 (Voice recording played.)

6 **Q.** What information do you have left to give Mr. Dixon?

7 **A.** Well, the compliance letter and a request from them that
8 they can verify whether or not there were charges taken on
9 non-U.S. bond trades.

10 **Q.** And at this point, why aren't you giving the European
11 execution data to Mr. Dixon?

12 **A.** Because I have been instructed not to.

13 **Q.** By who?

14 **A.** By Ross.

15 (Voice recording played.)

16 **Q.** Mr. Boomgaardt, the compliance letter that you refused to
17 send out, what statement was in there?

18 **A.** Well, there were lots of statements, I guess. There was
19 a statement that it had been an error.

20 MR. WEINBERG: Judge, this has been asked,
21 answered, reviewed, testified to.

22 THE COURT: Sustained. We've been over it.

23 **Q.** What concern are you expressing when you say, you know,
24 if they're asking whether the same thing happened in Europe
25 and we point-blank say no?

1 **A.** That we would be lying to the client at that point and
2 continuing the lie that we've already told them. We can't --
3 our explanation to the client can't involve us denying the
4 fact that we got these commissions.

5 MR. WEINBERG: I object to the last part of the
6 answer.

7 THE COURT: Sustained as to that because that's not
8 his understanding. That's saying what he thinks they could
9 or couldn't do. I'll strike that part. Next question.

10 **Q.** What had you told the client up to this point?

11 MR. WEINBERG: I object, unless this is something
12 new, Your Honor. We've gone over this.

13 MR. JOHNSTON: Withdrawn.

14 (Voice recording played.)

15 **Q.** Mr. Boomgaardt, I want to direct your attention to the
16 bottom of line 4 and into lines 1 and 2 on 5. What are you
17 saying there?

18 **A.** That we're trying to get the information that Graham
19 needs particularly around, as we talked about, the time stamp
20 futures and FX.

21 **Q.** I mean the part on 24, on page 4, where you say, "It may
22 be the same on the bond trades in Europe, we don't know," and
23 then continuing on the top of page 5, "It could be anything.
24 We don't know."

25 **A.** I'm speculating on what Graham might write in his report

1 if we don't give him the actual executions of what we did and
2 the commissions that we took in Europe, that he might write
3 in his report that we don't know how much they made in Europe
4 because they wouldn't tell us.

5 (Voice recording played.)

6 THE COURT: Any more questions on the call?

7 MR. JOHNSTON: No, Your Honor.

8 THE COURT: Then we'll take a break at this time.
9 Take the morning break. All rise for the jury.

10 (Jury exits the courtroom.)

11 THE COURT: How much longer of the witness?

12 MR. JOHNSTON: Ten to 15 more minutes. We're done
13 with calls.

14 THE COURT: I'm sorry?

15 MR. JOHNSTON: We're done with calls.

16 THE COURT: All right. Take a break, come back in
17 15 minutes, see you then.

18 (Court in recess at 11:09 a.m.

19 and reconvened at 11:22 a.m..)

20 THE COURT: Two quick things before we get the
21 jury. One, we're going to get you another pitcher of water,
22 Mr. Boomgaardt. Do you want me to get you a cup right now?
23 It might take us a couple of minutes.

24 THE WITNESS: I've got some in this cup right now,
25 so I'm fine for now. Thank you, Your Honor.

1 THE COURT: Second, we only have ten minutes, so
2 I'm going to tell the jury just ten more minutes on this
3 witness, because we're now on eight hours or thereabouts. I
4 think four on Tuesday, minus the -- what's today? Thursday?
5 Four? I'm not going to tell them this. I'm just counting on
6 our --

7 MR. FRANK: We're not on eight hours with this
8 witness. On Tuesday, we did an hour and a half.

9 THE COURT: An hour and a half on Tuesday. Four,
10 minus the break on Wednesday.

11 MR. FRANK: So that was a total of five --

12 THE COURT: Four plus an hour and a half, minus a
13 15 minute break.

14 MR. FRANK: Well, whatever, we're very close,
15 Judge. There's no more calls.

16 THE COURT: So I'll just tell them we're very
17 close.

18 MR. FRANK: That's fine. They're going to observe
19 that themselves when he wraps up.

20 THE COURT: They will, but they won't observe that
21 when they walk in. They won't observe that until he wraps
22 up.

23 MR. FRANK: Judge, could we have a very brief
24 sidebar?

25 THE COURT: Yes.

1 (The following discussion held at the bench.)

2 MR. FRANK: We totally understand Your Honor's
3 frustration with the pace. We share the frustration. We are
4 going to wrap up very quickly. This is the longest witness
5 for the direct case.

6 THE COURT: I won't say to them how long it's going
7 to be, if that's what you're asking me to do. My point is,
8 simply, I get it that he's a long witness, okay? I don't
9 have any problem that he's a long witness. I'm not going to
10 say to them and I won't say to them that you told me three to
11 five, or six to seven. I'm not going over anything like
12 that.

13 My point is only that like this is not because
14 Mr. Weinberg is objecting that it's taking this long, that
15 most of the objections have been fair. There have been other
16 questions that are leading that he hasn't objected to, but I
17 haven't said anything about it, because I'm trying not to --
18 I get it, it's hard. I'm not trying to step on you, Mr.
19 Johnston. I know that being a trial lawyer is a very
20 difficult thing and it's very easy to sit where I sit and
21 think you should do it this way, you should do it that way, I
22 get that. I'm old, but I'm not that old. But some of this
23 is like --

24 Well, you understand. So anyway. I won't say
25 that, but I'm expecting that we're going to wrap up soon with

1 this witness.

2 MR. FRANK: We are.

3 THE COURT: All right. Okay. I'm going to tell
4 them, in terms of scheduling that -- what we talked about
5 this morning, in terms of next week. Is it fair to represent
6 to them that we're on track, in terms of what we told them in
7 jury selection, in terms of when we finish the case?

8 MR. FRANK: I believe we are.

9 THE COURT: Okay. Fine.

10 (Bench conference concluded.)

11 THE COURT: Maria, go get the jury.

12 Oh, Mr. Weinberg, Judge Casper said that was fine
13 with her.

14 MR. WEINBERG: Great. Thank you very much.

15 THE COURT: You have the transcript already?

16 MR. WEINBERG: We have the transcript. There's
17 just the section that's marked sealed and we'll be getting
18 it.

19 THE COURT: You'll have that in time.

20 MR. WEINBERG: Thank you.

21 THE COURT: You don't need to do anything else to
22 get it. I just don't want to have a delay based on the
23 mechanics of obtaining that portion of it.

24 MR. WEINBERG: Thank you, Judge.

25 (The jury enters the courtroom.)

1 THE COURT: So ladies and gentlemen, I want to
2 update you a little bit on the schedule before we resume the
3 questioning. Two things. First, we're on track to finish.
4 That means deliver to you the case, in the time that I told
5 you at the outset. That you'll have it no later than -- I
6 continue to anticipate you'll have it no later than that
7 Thursday that I told you about, the 28th.

8 MR. FRANK: The 28th.

9 THE COURT: The 28th of June. I confirmed -- I
10 went over that with the lawyers during the break.

11 The second thing is, I mentioned to you at the
12 beginning, that there might be some afternoons where we're
13 going to sit. So I want to go over the schedule, because
14 there are two afternoons that we're going to have court.
15 Tomorrow will be 9:00 to 1:00, just the same as we've been
16 doing this week. Monday will be 9:00 to 1:00, just the same
17 as this week. Tuesday and Wednesday we'll sit in the
18 afternoons, 9:00 to 1:00, and we'll have an hour break for
19 lunch.

20 And you'll have two choices for lunch, you can
21 bring your own lunch and stay in the jury room and eat there,
22 what have you. You can go out, leave through the back, go
23 out of the jury room, and you can eat lunch in the cafeteria
24 in the courthouse. You might have seen it when you're here.
25 You can eat lunch there. You can take your lunch, you can

1 get lunch there and bring it back to the jury room. Or you
2 can go outside to any place in the neighborhood, get lunch,
3 come back. You'll have an hour.

4 We'll resume at 2:00. We'll go no later than 4:30.
5 We're going to do that on Tuesday of next week. Same
6 schedule next Wednesday. I'll tell you why. The reason for
7 this is the next week we have a number of witnesses from
8 overseas and we're trying to get them all done and not have
9 them have to stay in the United States longer than necessary,
10 and accommodating travel schedules and other commitments.

11 Next Thursday, there's no court. No trial on
12 Thursday, because of a court event that I have, that I have
13 to attend. And then Friday next week, we'll have court
14 again, just 9:00 to 1:00. Okay. All right.

15 You may resume, Counsel, go ahead.

16 BY MR. JOHNSTON:

17 **Q.** The last call we listened to was on August 30, 2011.
18 What happened at State Street in the four to five weeks after
19 that call?

20 **A.** The investigations continued internally. State Street
21 appointed an outside legal firm to come in and do some
22 investigative work, as well as an accounting firm that came
23 in to do some investigative work around this, as well. And
24 in that intervening period, Ed Pennings was suspended from
25 work, and I guess a little while later, Ross, as well.

1 Q. Were you dismissed right away?

2 A. No.

3 Q. Were clients eventually told that they had been
4 overcharged?

5 A. Yes.

6 Q. When did that occur?

7 A. Well, later -- later that year. So towards the -- the
8 kind of fourth quarter of 2011.

9 Q. Who went to speak to the clients?

10 A. Marshall Bailey, Steve Smit. I also sat in on some of
11 those client meetings.

12 Q. At the meetings you attended, who did the speaking?

13 MR. WEINBERG: Judge, I object to this area, it's
14 beyond the scope of the allegations on the indictment.

15 MR. JOHNSTON: This goes to witness credibility,
16 which will become apparent on cross-examination.

17 MR. WEINBERG: Well, let's wait for
18 cross-examination.

19 MR. JOHNSTON: Well, part of what the Government is
20 entitled to --

21 MR. WEINBERG: May we approach bench?

22 THE COURT: Let's do this at sidebar.

23 (The following discussion held at the bench.)

24 MR. JOHNSTON: Part of what the cross-examination
25 is going to try to elicit is that he never thought anything

1 he did was wrong, so his presence at meetings where he didn't
2 speak up and say things to the clients.

3 THE COURT: So I understand the context. These are
4 meeting that people from State Street go, where they say, in
5 some form, we're paying you back, we overcharged you, and
6 they may have provided some explanation as to how.

7 MR. JOHNSTON: They've tried to -- the only thing
8 I'm trying to elicit here is that at these meetings, he did
9 speak up and volunteer that he had participated in this and
10 that is relevant, because on cross, they're going to try to
11 suggest that --

12 THE COURT: Are you going to try to suggest that?

13 MR. JOHNSTON: -- he was wrong. All these
14 statements that he made after this to internal investigators
15 to clients are all consistent with him believing that he had
16 done nothing wrong.

17 THE COURT: Are you going to suggest that he did
18 nothing wrong?

19 MR. WEINBERG: I'm certainly going to use the
20 statements that he made over a lengthy period of time to
21 demonstrate what he was saying, Your Honor, whether he says
22 he was lying or telling the truth, we'll see on cross. They
23 have redirect.

24 MR. FRANK: Well, Your Honor, basically, no --

25 MR. JOHNSTON: If it looks like we're hiding the

1 fact that he had different stories at a different time, then
2 obviously it's damaging to our case, so we're entitled to
3 elicit, on direct, instances where his silence or speaking
4 could be suggested to say that.

5 THE COURT: So you would anticipate that there's --
6 post these meetings -- statements that he made in which he
7 basically asserted, or could read to be asserted, that he
8 thought at the time that what he was doing was okay.

9 MR. JOHNSTON: Yes.

10 THE COURT: And you're saying that before he made
11 some of these statements he went to these meetings and at
12 these meetings he said what?

13 MR. JOHNSTON: He said nothing. He didn't
14 volunteer anything. He just sat there quietly at those
15 meetings.

16 THE COURT: That's what you think happened at those
17 meetings.

18 MR. JOHNSTON: Other people spoke.

19 THE COURT: No, but that he said nothing.

20 MR. JOHNSTON: He didn't say anything.

21 MR. WEINBERG: I mean, this is being offered as the
22 inevitable consequence of having the other people making
23 statements consistent with the Government's view of
24 prosecution. It's hearsay.

25 MR. JOHNSTON: We're not going to elicit what the

1 other people said. We're just going to ask did you speak up
2 to volunteer your participation.

3 THE COURT: I'm going --

4 MR. JOHNSTON: I'm going to ask was there a
5 meeting -- yes, who did the speaking in those meetings. In
6 those meetings, did you volunteer --

7 THE COURT: Why isn't it hearsay what those people
8 told them?

9 MR. JOHNSTON: It's not about -- we're not
10 eliciting what was told.

11 THE COURT: You just did.

12 MR. FRANK: That's already happened.

13 MR. WEINBERG: The leading question is the
14 assertion -- there's nothing in the record about what State
15 Street people said to the clients. That is what I understood
16 we were not going to go into --

17 THE COURT: You can say there were meetings.

18 MR. JOHNSTON: But the fact that was said -- he can
19 testify that things were said. We're not offering for the
20 truth of the matter.

21 THE COURT: You can say things were said, but
22 that's not saying what was said.

23 MR. JOHNSTON: Right, but certain things were said
24 and the fact of the statements are his state of mind.

25 MR. FRANK: He has just testified, without

1 objection, that clients were told they were overcharged.

2 THE COURT: Yeah, and he said he told them that and
3 that he knew that.

4 MR. FRANK: He didn't say that he told them that.

5 MR. JOHNSTON: He said they were told.

6 THE COURT: Well, I think in some instances he told
7 them.

8 MR. FRANK: He said he was present.

9 MR. JOHNSTON: He said he was present at these
10 meetings where they were told. I'm just going to elicit that
11 he didn't do the talking and they're not being offered for
12 the truth of the fact that they were overcharged. Obviously,
13 we don't need that. We don't need State Street's statement
14 to prove that they were overcharged. This is all about his
15 state of mind and what we believe we're entitled to, a few
16 targeted questions that will pertain to his state of mind.

17 THE COURT: So basically what you want to elicit
18 that he went to a meeting with client and with other people
19 from State Street, other people from State Street said --
20 what did these other people from State Street say?

21 MR. JOHNSTON: Said here's your money back, we
22 overcharged you, and then he said nothing. He didn't
23 volunteer that he had been a part of this, that this had been
24 intentional.

25 THE COURT: So he was silent at all these meetings

1 is what you want and that then arguably takes -- rebuts the
2 assertion that --

3 MR. JOHNSTON: That he was silent, because he
4 didn't think that he had done anything wrong.

5 MR. WEINBERG: I understood that this trial was not
6 going to include, from my discussions with Mr. Frank, State
7 Street's conduct after the conspiracy to pay back clients, to
8 meet with clients, to have analysis of clients. This is a
9 backdoor way -- where he, Mr. Johnston, snuck one question
10 and answer in. This is highly inappropriate. It's hearsay,
11 the jury is going to receive it that State Street agreed with
12 Mr. Boomgaardt's current trial testimony that there was
13 something wrong with it. The conclusion, the inference of
14 paying them back, is something was wrong. The bank concluded
15 something was wrong.

16 MR. FRANK: Your Honor, if I may respectfully say,
17 we're not going to get into the main payback. Mr. Weinberg
18 is right, we don't believe any of the September stuff was
19 relevant, other than to show that Mr. Boomgaardt did not,
20 himself, come clean in September.

21 MR. JOHNSTON: Or October or November. For a few
22 years after that.

23 MR. FRANK: We're not going to get into who's
24 getting paid back.

25 MR. WEINBERG: They can ask a single leading

1 question of Mr. Boomgaardt --

2 MR. FRANK: No, we can't ask a single leading
3 question.

4 MR. WEINBERG: I'll allow one, but to get in what
5 State Street said it did in his presence is --

6 MR. FRANK: We are not going to get into what State
7 Street said.

8 MR. WEINBERG: Well, he just did with a leading
9 question.

10 MR. FRANK: Were the clients eventually told they
11 were overcharged, obviously Mr. Boomgaardt and Mr. McLellan
12 and Mr. Pennings were all ultimately fired, so we don't need
13 to go into any --

14 THE COURT: What is the relevance of them being
15 fired?

16 MR. JOHNSTON: We -- we need to tell the stories
17 why there are different stories at different points of time.
18 We need the relevant facts of who's going on, with their
19 employment, are they contesting their firing, why are they
20 having these different statements. What's the context of it
21 and this is all going to be relevant.

22 THE COURT: Okay. But then I'm going to tell them
23 that State Street's view of the world is irrelevant to their
24 determination.

25 MR. FRANK: We have no objection to that.

1 MR. JOHNSTON: We have no objection to that.
2 That's fine.

3 THE COURT: So you're not going to ask them about
4 the paying back. What are you going to ask them?

5 MR. FRANK: He's going to ask them whether there
6 are meetings with clients in the fall of 2011, was he present
7 at those meetings, did he say anything about his own conduct
8 at those meetings. That's it.

9 THE COURT: That's fine. You can lead on that.

10 MR. JOHNSTON: We just have to give the context of
11 the context of the meetings, that the clients were being told
12 that they were overcharged --

13 THE COURT: No, you don't need that. He just said
14 I don't need that. Remember what he already told you. The
15 most important lesson that comes out of this case for you to
16 take back to the Department of Justice. This is really
17 important. That is the local provinces rule and that the
18 local -- the district of Massachusetts, which is actually the
19 oldest district in the entire federal system, older than the
20 Southern District. Formed before the Southern District.

21 MR. FRANK: Southern District of Florida.

22 THE COURT: Formed before those people who think
23 they're the mother, that they rule. He just told you that
24 you're not asking that, so you're not asking that. That's
25 his ruling. You can appeal that to his boss.

1 MR. WEINBERG: Just so we're clear.

2 THE COURT: His two leading questions. One, were
3 they meetings with clients, where you were present, yes, and
4 did you speak up and say anything about what had happened.

5 MR. FRANK: But that limited scope of questioning
6 is conditioned on Mr. Weinberg not getting into State
7 Street's view in September of 2011.

8 MR. JOHNSTON: Which of course he is going to do.

9 MR. WEINBERG: Don't tell me what I'm going to do.
10 Mr. Frank and I have discussed this.

11 THE COURT: If he does, then you come back.

12 MR. WEINBERG: The question that you just asked --
13 you would ask him leading questions and getting him to talk
14 about what State Street is after. Mr. Frank and I had an
15 agreement. We discussed this. We agreed that we were not
16 going in the Government putting in State Street's -

17 THE COURT: And you're not either?

18 MR. WEINBERG: I don't intend to. And you know,
19 quite frankly, the last question or two, it breached that
20 agreement and walked into an area that we had agreed not to.

21 MR. FRANK: I understand it wasn't relevant.
22 Mr. Weinberg didn't commit.

23 MR. WEINBERG: I committed not going into.

24 THE COURT: We're going to leave it where it is for
25 now. Okay.

1 (Bench conference concluded.)

2 THE COURT: Let me explain one thing, ladies and
3 gentlemen. I apologize for taking up your time talking about
4 this legal issue.

5 So the fact that Mr. Boomgaardt says that
6 Mr. Pennings and Mr. McLellan were suspended by State Street,
7 those things are relevant to various people's state of mind,
8 but whatever State Street's view of this, whether it was
9 right or wrong, legal or illegal, that's not a fact that's
10 for you to -- that's relevant to your determination.

11 You decide -- you listen to sort of what happened,
12 you decide what happened, you decide what people did, what
13 they didn't do, what they said, what they didn't say. You
14 decide what their state of mind was, based on the evidence
15 you hear and the testimony about the various people. And
16 then you decide, based on my instructions at the end, what
17 was -- whether the Government's proved its case or not.

18 What State Street's view of it is -- that's just,
19 in a sense, an opinion about something, and they're not being
20 asked the question you were asked, and their opinion is not
21 relevant.

22 Okay. Go ahead.

23 BY MR. JOHNSTON:

24 **Q.** Mr. Boomgaardt, in the fourth quarter of 2011, were you
25 present at meetings with clients that have been discussed in

1 your testimony?

2 **A.** Yes.

3 **Q.** At any of those meetings, did you volunteer that you had
4 participated in any plan to intentionally overcharge them?

5 **A.** No.

6 **Q.** How long did you remain at State Street?

7 **A.** I was suspended on the 13th of January, in 2012.

8 **Q.** Before you were suspended, did you participate in any
9 interviews with internal investigators?

10 **A.** Yes.

11 **Q.** What were those interviews about?

12 **A.** They were about the -- the facts around the specific
13 transitions that we've talked about, the -- the expressly --
14 the mechanics and the facts around the overcharging of these
15 clients.

16 **Q.** Were you completely truthful in those interviews?

17 **A.** I wasn't completely truthful as to my own -- my own
18 culpability in those, but I was factual in everything else
19 around the mechanics of what was done, when, how, and all of
20 those things.

21 **Q.** What do you mean you weren't completely truthful about
22 your culpability?

23 **A.** Well, I had a -- I was trying to protect my job, so I'm
24 playing down my own -- my own role in those -- in those
25 transitions that we spoke about.

1 Q. You testified that you were fired.

2 A. Yes.

3 THE COURT: Actually, he didn't testify to that.
4 He testified that he was suspended.

5 MR. JOHNSTON: Sorry.

6 BY MR. JOHNSTON:

7 Q. You were suspended. Did you -- were you eventually
8 terminated?

9 A. Yes. I was suspended and eventually terminated for
10 misconduct, yes.

11 Q. Did you contest your termination?

12 A. Yes, I did.

13 Q. And what was the basis for contesting your termination?

14 A. That I hadn't been treated fairly by the bank.

15 Q. Why did you think you hadn't been treated fairly?

16 A. I guess for a couple of reasons. I didn't think that
17 they had treated me fairly in -- in my dismissal process, but
18 also that my involvement in -- in the transitions was not
19 sufficient to warrant gross misconduct, which is what they
20 had initially charged me with.

21 Q. Did you think you had done anything wrong at the time you
22 had done it?

23 A. I thought that we had lied and misled the clients and I
24 was embarrassed and ashamed of all of that, but, you know,
25 the fact that they then kept me around to sort of help clean

1 up the mess, I guess, was the bit that I had the biggest
2 problem with. If -- they had the evidence, if they were
3 going to dismiss me, that they could have done it at the same
4 time as Mr. McLellan and Mr. Pennings, but they kept me
5 around for some number of months for their own reasons.

6 **Q.** Were you interviewed by other authorities even after you
7 were dismissed?

8 **A.** Yes.

9 **Q.** By whom?

10 **A.** I continued to be interviewed by an accounting firm that
11 was working on behalf of the FCA, which is what the FSA
12 rebranded itself to be, so the regulator in the UK, as well
13 as the City of London Police.

14 **Q.** Were you completely truthful in those interviews?

15 **A.** Again, towards the fact of how it worked and things, yes,
16 but still playing down my own involvement in all of this.

17 **Q.** Why were you planning down your own involvement?

18 **A.** Self-preservation, trying to -- you know, I had allowed
19 myself or wanted to believe that there was a way out of this.
20 But you know, it's -- you know, the -- it was -- it was a
21 process I guess I needed to go through to be honest with
22 myself through all of this.

23 **Q.** Did there come a time when you decided to tell the truth?

24 **A.** Yes.

25 **Q.** When was that?

1 **A.** I reached out to the Department of Justice in the US and
2 came over here at my own expense and my own -- my own
3 volition to come and explain things to the Department of
4 Justice here.

5 **Q.** Had you been contacted before you reached out yourself?

6 **A.** No, I hadn't. I hadn't been subpoenaed or charged or --
7 no, I didn't even know if I was a person of interest to the
8 DOJ at that point, no.

9 **Q.** How did you even know there was an investigation?

10 **A.** I had seen a footnote in a State Street report, State
11 Street filing of some kind, I can't remember exactly what it
12 was, that had mentioned that there was -- US authorities were
13 looking into the transition management business. So on the
14 back of that, I reached out.

15 **Q.** Did you have an understanding at the time when you did
16 all this conduct whether what you were doing was right or
17 wrong?

18 **A.** Yes, I did have an understanding.

19 **Q.** What was that?

20 MR. WEINBERG: Judge, I object.

21 THE COURT: Overruled. This is now back at the
22 time of these transitions.

23 MR. WEINBERG: If it's back at the time of the
24 transitions, fine. If it's --

25 THE COURT: Yes, that's what --

1 That's what the question is, right?

2 BY MR. JOHNSTON:

3 **Q.** Yes, back at the time of the transitions, did you know
4 what you were -- did you have an understanding about whether
5 what you were doing was right or wrong?

6 **A.** Yes, my -- I wasn't comfortable with any of it. It sat
7 badly with me and I knew it was the wrong thing to be doing.

8 **Q.** Why did you do it?

9 **A.** Because I allowed myself to get comfortable and believe
10 the stories that I was told by people that I trusted, senior
11 managers, and people that I believed in, and who, quite
12 frankly, had a lot of control over whether my career was
13 successful at State Street or not.

14 **Q.** Did you eventually plead guilty to a crime?

15 **A.** I did, yes.

16 **Q.** When was that?

17 **A.** I pled guilty -- well, I guess in front of the Court
18 about a year ago.

19 **Q.** What was the crime to which you pleaded guilty?

20 **A.** Conspiracy to defraud.

21 **Q.** Have you signed a cooperation agreement with the
22 Government?

23 **A.** Yes, I have.

24 MR. JOHNSTON: I would like to show an exhibit just
25 to the witness.

1 MR. WEINBERG: We would ask the Court for the
2 instruction.

3 THE COURT: Do you want it now or after he does it?

4 MR. WEINBERG: Whenever Your Honor prefers.

5 THE COURT: Why don't you do it first and then
6 I'll -- go ahead.

7 BY MR. JOHNSTON:

8 Q. I'll show you Government Exhibit 201.

9 MR. JOHNSTON: You can zoom in on the top, please,
10 of this, Erin.

11 BY MR. JOHNSTON:

12 Q. Do you recognize this document?

13 A. Yes, I do.

14 Q. What is it?

15 A. It's a copy of the plea agreement that I have with the
16 United States.

17 MR. JOHNSTON: Your Honor, at this time, the
18 Government moves to admit Exhibit 201.

19 THE COURT: Any objection?

20 MR. WEINBERG: No objection.

21 THE COURT: Subject to the instruction?

22 MR. WEINBERG: Yes.

23 THE COURT: All right. So ladies and gentlemen,
24 I'll publish it, it's admitted. And I'll publish it to the
25 jury.

1 (Exhibit No. 201 admitted into evidence.)

2 THE COURT: Let me explain both this document,
3 which is the witness's plea agreement with the United States
4 Department of Justice, and how you should understand -- I
5 imagine you're going to hear a little bit more about this
6 either from Government counsel or defense counsel.

7 That is, you'll hear evidence that Mr. Boomgaardt
8 has pleaded guilty to charges arising from the events that
9 are subject to this trial. You must not consider his guilty
10 plea as any evidence of Mr. McLellan's guilt. Let me just
11 repeat that. It is not evidence of Mr. McLellan's guilt.

12 Mr. Boomgaardt's decision to plead guilty was a
13 personal decision about his own guilt. You should disregard
14 his guilty plea completely when considering Mr. McLellan's
15 guilt or innocence. Instead, you may consider
16 Mr. Boomgaardt's guilty plea only for the purposes of
17 determining how much, if at all, to rely upon his testimony.
18 You should give Mr. Boomgaardt's testimony the weight you
19 believe it deserves, keeping in mind that it must be
20 considered with caution and great care.

21 Go ahead.

22 MR. JOHNSTON: Zoom in on the first paragraph.

23 BY MR. JOHNSTON:

24 **Q.** Who is this agreement between?

25 **A.** It is between myself and the United States Attorneys.

1 MR. JOHNSTON: Could we take a look at page 11,
2 please. Zoom in on the signature, please.

3 BY MR. JOHNSTON:

4 **Q.** Do you see your signature here?

5 **A.** Yes, I do.

6 **Q.** Why is the -- could you explain why the date is different
7 than the date that you pled guilty?

8 **A.** This was, I guess, done under -- it was done under seal a
9 good year prior to me pleading in front of the judge.

10 MR. JOHNSTON: You can take this down, Erin.

11 BY MR. JOHNSTON:

12 **Q.** Do you hope to receive any benefit from cooperating with
13 the Government?

14 **A.** Yes.

15 **Q.** And what do you hope to receive?

16 **A.** A reduced sentence when it comes to sentencing.

17 **Q.** What is your understanding of what is required of you?

18 **A.** To tell the truth.

19 **Q.** What is your understanding of what could happen to you if
20 you don't tell the truth?

21 **A.** Well, both I won't get the benefit of any reduced
22 sentence, but I could be open for perjury charges, as well.

23 **Q.** Who decides what, if any sentence, you get?

24 **A.** The judge.

25 MR. JOHNSTON: Thank you. No further questions.

1 THE COURT: Cross-examination?

2 MR. WEINBERG: Thank you, Your Honor.

3 **CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT**

4 BY MR. WEINBERG:

5 Q. Who decides whether you get charged with perjury,
6 Mr. Boomgaardt? The United States Attorneys, correct?

7 A. I guess you'll know that better than me. But it's --

8 Q. Who are the prosecutors in this courtroom?

9 A. The prosecutors are the DOJ, yes.

10 Q. Who brings charges?

11 A. They would be the ones responsible for bringing charges
12 is my understanding.

13 Q. Perjury is a charge, right?

14 A. Yes, it is.

15 Q. So, therefore, the decision or whether or not to indict
16 you for perjury in this trial would be made by Mr. Frank and
17 Mr. Johnston, correct?

18 MR. FRANK: Objection. Misstates.

19 THE COURT: Overruled. It's a question about what
20 his state of mind is.

21 You can answer.

22 THE WITNESS: I don't know the answer to that. It
23 may well be the case under US law that you can make that
24 complaint to make the perjury charge, yourself, sir. I don't
25 know.

1 BY MR. WEINBERG:

2 **Q.** Do you really believe, as you sit here now, testifying
3 under oath, that defense counsel can decide whether
4 government witnesses get indicted for perjury? Is that
5 really your testimony, Mr. Boomgaardt, or is it just a wise
6 guy answer?

7 **A.** I can assure you ---

8 MR. JOHNSTON: Objection. Argumentative.

9 THE COURT: Overruled.

10 THE WITNESS: I'm not trying to provide you any
11 wise guy answer, sir. I'm trying to give you answers that
12 are accurate. And my knowledge of the US legal system is
13 limited, sir.

14 BY MR. WEINBERG:

15 **Q.** In Great Britain, do defense counsel get to indict
16 Government witnesses for perjury?

17 **A.** I don't know. I'm not a criminal lawyer.

18 **Q.** How many times have you met with Mr. Frank or Mr.
19 Johnston? How many different days?

20 **A.** Several. I don't know the answer off the top of my head.
21 But several.

22 **Q.** Four full days in 2014, when you first started
23 proffering?

24 **A.** That's probably about right. Something -- that sounds
25 roughly correct, I guess.

1 **Q.** Many more hours and many more days over the past month?

2 **A.** There have been more meetings over the past month,
3 certainly, yes.

4 **Q.** You've met with them whenever they've asked you to meet
5 with them; is that correct?

6 **A.** Pretty much, yes.

7 **Q.** You are hoping, are you not, that they file a motion that
8 could help you, correct?

9 **A.** Yes, the 5K motion to be filed would come from them.
10 That's correct.

11 **Q.** And you're hoping that as a result of the 5K motion that
12 comes from them, you might gain sentencing leniency; is that
13 correct?

14 **A.** Yes, that's correct.

15 **Q.** And you believe the 5K motion will help you get
16 sentencing leniency, correct?

17 **A.** I'm hopeful. I don't know what it's going to be and I
18 haven't seen it and there have been no promises made in that
19 regard, sir.

20 **Q.** And you've been cooperating for four years and there's
21 still no promise whether or not your cooperation merits the
22 Government's filing of a 5K motion, correct?

23 **A.** That's correct, sir.

24 **Q.** You understand that the decision whether or not to file
25 one has been deliberately delayed and reserved by Mr. Frank

1 and Mr. Johnston until after you testify; is that right?

2 MR. FRANK: I object, Your Honor.

3 THE COURT: What's the objection?

4 MR. FRANK: It misstates, it attributes
5 deliberation to the United States Government. It attributes
6 deliberation to me personally, which Mr. Weinberg knows to be
7 untrue.

8 MR. WEINBERG: We don't know that to be untrue,
9 Your Honor.

10 THE COURT: Okay. So ladies and gentlemen, let me
11 explain. Mr. Frank and Mr. Johnston are the lawyers
12 representing the United States Government. The United States
13 Government, like an entity, only acts through its lawyers.
14 It can't act, except through people. Whether these decisions
15 are --

16 Whether the decisions relating to Mr. Boomgaardt
17 are made solely by Mr. Johnston and Mr. Frank, or whether
18 they involve other people in the course of the Government,
19 and other lawyers or people involved, is a separate question.
20 So I think that we're not going to have a trial about who
21 makes the decision. That's really not the question. So
22 Mr. Weinberg, you can have these questions, but the focus of
23 it is not -- is on sort of the Government's decision and the
24 Government acts through a whole set of actors.

25 Go ahead.

1 BY MR. WEINBERG:

2 Q. You sat with the Government for four full days?

3 THE COURT: But one lawyer per witness.

4 MR. FRANK: Yes, Your Honor.

5 THE COURT: So what that means, ladies and
6 gentlemen, that there's one lawyer per each witness. That
7 means one lawyer -- so we saw on the direct examination is
8 Mr. Johnston asks the questions, Mr. Weinberg made the
9 objections. That means Mr. Weinberg will be the one doing
10 the cross-examination and it means Mr. Johnston does the
11 objections.

12 When we get to redirect, there will be one more
13 round, narrower, but there will be one more round.
14 Mr. Johnston will ask the questions and Mr. Weinberg will
15 make any objections, and if there's recross, that's the last
16 part of the two rounds, then Mr. Weinberg will ask the
17 questions. But the other lawyers on the team can't sub in on
18 the same witness, either for objections or for witnesses.

19 They switch on different witnesses, because they're
20 sharing the load. But we try to do that, that's as much for
21 focus and convenience to keep track of things. So sometimes
22 it happens that we allow that to happen, but I'm really
23 reminding counsel that we should do one.

24 (Discussion off the record.)

25 THE COURT: Go ahead.

1 MR. WEINBERG: Thank you, Your Honor.

2 BY MR. WEINBERG:

3 Q. Mr. Boomgaardt, I want to go back to 2014. You came to
4 the United States and you sat with the Government prosecutors
5 for two full days in May of 2014, correct?

6 A. That sounds right, yes. The date sounds correct.

7 Q. At your own expense?

8 A. At my own expense.

9 Q. Wanting them to receive your testimony, correct? Your
10 cooperation?

11 A. Yeah. To answer questions that they might have, but yes,
12 to have a conversation with them.

13 Q. And that told you whether or not you were going to be
14 prosecuted or not at that time, correct?

15 A. Correct.

16 Q. You came here pursuant to what was called the proffer
17 agreement. Do you recall that?

18 A. Yes.

19 Q. And the proffer agreement was between you, the fraud
20 section of the Department of Justice, and the US Attorney's
21 Office, who specifically said to you that the prosecutors
22 would reserve the right whether or not to bring charges or
23 not against you, correct?

24 A. I was aware of that, yup.

25 Q. Your desire at that time was to convince them not to

1 bring charges against you, correct?

2 **A.** That would have been the most desirable outcome,
3 certainly.

4 **Q.** You came back to see them in November of 2014, did you
5 not?

6 **A.** Yes, I believe that's right.

7 **Q.** Sat with them again for two full days, correct?

8 **A.** Yes, I believe that's correct.

9 **Q.** Answered all their questions, correct?

10 **A.** Yes. Yeah. They were asking questions and I was
11 answering them, yes.

12 **Q.** And again, your hope at that time was that your proffer
13 to them and your cooperation with them and your answering
14 every question they asked, day after day, would result in
15 your not being prosecuted, correct?

16 **A.** That was an aspiration. It was also to, you know, for my
17 own personal reasons to come and get this clear and get
18 this -- you know, it had been hanging around through lots of
19 different investigations. This was another one. I
20 cooperated with all of them. This was another one to
21 cooperate with.

22 **Q.** Let's talk about some of other investigations. There was
23 an investigation by State Street about your conduct, was
24 there not?

25 **A.** Yes.

1 Q. And you were interviewed by State Street's external
2 counsel, Freshfields, in London, were you not?

3 A. I was.

4 Q. At least four times, correct?

5 A. I don't know if it was that many, but I'll take your word
6 for it. It was awhile ago.

7 Q. You were interviewed by Deloitte, were you not?

8 A. Yes.

9 Q. They were hired by State Street to help in this internal
10 investigation, correct?

11 A. Yes, that's right.

12 Q. You were interviewed, were you not, by the City of London
13 Police?

14 A. I was.

15 Q. You gave statements to State Street's disciplinary
16 hearing officer, did you not?

17 A. Yes, I did.

18 Q. A 21-page written statement?

19 A. Sounds about right.

20 Q. An appeal from the denial of your request that you not be
21 suspended?

22 A. Yes. I guess you're referring to the outcome of the
23 first disciplinary hearing that I had.

24 Q. You testified twice, once in the disciplinary hearing,
25 and once at the appeal, correct?

1 **A.** That's true. Correct.

2 **Q.** Let's go to some of the things that you said to them
3 during these other investigations that preceded 2014.

4 Did you sit down and write a 20- or 21-page written
5 statement in February of 2012, just months after the last
6 phone call that the Government played to you during their
7 lengthy direct examination?

8 **A.** I did put a written document together for my -- yes, for
9 my disciplinary hearing. I did, yes.

10 **Q.** And your intention was that that written document be
11 received as the truth, correct?

12 **A.** Yes.

13 **Q.** You wanted to convince the people that you were telling
14 the truth when you wrote that 21-page written statement,
15 correct?

16 **A.** Yeah. I wanted to get my case across as to why I thought
17 I should retain my job at State Street and why I should not
18 be dismissed.

19 **Q.** And they forced you to write one thing or another, didn't
20 they?

21 **A.** Nobody was holding a gun to my head. No, sir.

22 **Q.** Though you had some time limits, you had enough time to
23 write 21 pages, correct?

24 **A.** Yes, evidently.

25 **Q.** You're an intelligent guy, you know what you were

1 writing, correct?

2 **A.** Yes.

3 **Q.** Do you recall saying in the very first paragraph of that
4 21-page statement, "Honesty and integrity are core principles
5 for me"?

6 **A.** Yes, sir, I remember writing that.

7 **Q.** Do you remember saying that "Over the past three and a
8 quarter years at State Street, I believe I have shown my
9 commitment to the best interest of State Street and its
10 clients and how important honesty and integrity are to me"?

11 **A.** Yeah, that's a -- that's a statement from there. Yes.

12 **Q.** Do you recall saying in this written statement, "At all
13 times, I behaved honestly and with integrity and without any
14 intent to mislead clients"?

15 **A.** That is written in there. As I said I am --

16 **Q.** Do you recall saying, "At all times I acted honestly and
17 with integrity. I did not deliberately mislead clients"?

18 Do you recall writing that?

19 **A.** That's also in there. Yes, sir.

20 **Q.** And you wanted to be believed, correct?

21 **A.** Yes.

22 **Q.** Do you recall saying "I have dealt honestly and
23 professionally with clients in all communications."

24 Do you recall that?

25 **A.** I do.

1 **Q.** And do you recall writing that although you didn't agree
2 with the business decisions "at no time did I believe I was
3 participating in an act to deceive clients"?

4 **A.** Yes, that's written in there.

5 **Q.** "Or that what we were doing was in accordance with the
6 relevant contracts."

7 **A.** Also, that was what I was told by the people that I
8 trusted to -- who said they looked at all those things. So
9 again, you know, the contract is only one part of this.

10 **Q.** Well, let's be a little specific here. You met with Ed
11 Pennings, or spoke to Ed Pennings on a regular basis,
12 correct?

13 **A.** Which period are we talking about, sir?

14 **Q.** 2010/2011.

15 **A.** At work, yes.

16 **Q.** At work.

17 **A.** He was my direct line boss. Yes. I spoke with him on a
18 daily basis.

19 **Q.** You worked in the same building, correct?

20 **A.** Correct. Yes.

21 **Q.** Mr. McLellan didn't work there, although occasionally he
22 visited. Correct?

23 **A.** That is correct, sir.

24 **Q.** Your calls were tape-recorded, correct?

25 **A.** The calls that were coming from my -- the phone on my

1 desk were recorded after a certain point. There were some
2 that were not recorded, as I think I explained. They were --
3 I made sure they were recorded so that we had tapes of those
4 conversations for my analysts.

5 **Q.** Yes or no, have you ever heard a tape recording of Mr.
6 McLellan discussing the contract with any of the six
7 transition clients prior to your discussions on August 26th
8 that the Government just pled?

9 **A.** Could you repeat the question?

10 **Q.** Yes. Have you heard any tape played for you by the
11 Government, your lawyers, anyone, prior to August 26th, the
12 day that you and Mr. McLellan were talking after the fact --

13 **A.** Uh-huh.

14 **Q.** -- where Mr. McLellan is talking to you about a contract?

15 **A.** I don't -- I don't believe so.

16 **Q.** Do you recall any tape that you heard, prior to
17 August 26th, where Mr. McLellan is talking to you about what
18 lawyers have said to him?

19 **A.** No, I don't believe so. But my --

20 **Q.** Do you recall any tape where Mr. McLellan is talking to
21 you about any conversations he had with David Puth, who was
22 to him what Mr. Pennings was to you?

23 **A.** I don't know.

24 **Q.** Yes or no?

25 **A.** No.

1 **Q.** But you did have lots and lots and lots of conversations
2 with Ed Pennings about contracts, correct?

3 **A.** It wasn't the biggest subject of conversation, but we did
4 talk about it. We talked about everything, but lots and lots
5 and lots is probably overstating it. Legal agreements were
6 not part of my role at State Street, but they were part of
7 Ed's.

8 **Q.** But your contracts were not part of, as you said, your
9 remit or your role, correct?

10 **A.** That's right.

11 **Q.** It was Mr. Pennings's department, correct?

12 **A.** Yeah, it was for him and his sale team, for each of those
13 transitions, to make sure that the legal agreements were in
14 place and liaise with the legal team.

15 **Q.** And Mr. Pennings told you that contracts were in place
16 that authorized the charging of undisclosed spreads to
17 clients, even clients who were charged fees. That came from
18 Mr. Pennings to you, correct?

19 **A.** Yes. He told me that it had been approved and that those
20 contracts allowed the taking of those undisclosed
21 commissions.

22 **Q.** Mr. Pennings told you, during these conversations, that
23 he had had conversations with the lawyers in the London
24 office of State Street, correct? Meaning Simone Paul?

25 **A.** Yes, she was one of the lawyers in the State Street

1 office. That's one of them, yup.

2 **Q.** And he, Mr. Pennings, assured you that the UK lawyers
3 knew about the charging of undisclosed spreads on top of fees
4 and that they had approved that new business model, correct?

5 **A.** He did give me the assurance that they had looked at the
6 plan and that it was -- that they had approved it, yes.

7 **Q.** You weren't there when you talked to the lawyers. You
8 were relying on him, right?

9 **A.** That's right. I wasn't a party to those conversations
10 directly.

11 **Q.** When he told you about the contracts, you didn't always
12 read the contracts, you relied on him, correct?

13 **A.** That's right. More often than not, I didn't read the
14 contracts before transitions. That's right.

15 **Q.** Did he tell you he went to the executive management at
16 State Street Global Markets International and told them that
17 the new business model at State Street, in early 2011, was to
18 charge undisclosed spreads, as well as fees?

19 **A.** He had -- he had told me that he had taken and brought up
20 that subject with the European global markets. So not the
21 global team, but the European management and that he had
22 brought that up at a management committee meeting, yes.

23 **Q.** So in other words, he told you he had disclosed the
24 business model of charging fees and an undisclosed spread to
25 the European management committee?

1 **A.** Yes. And on phone conversations in Ross' -- in Ed's
2 office with Ross, he told me the same thing about Puth and
3 others at the global level.

4 **Q.** I'm focusing you right now on Mr. Pennings.

5 **A.** I understand, but I think it's --

6 THE COURT: Mr. Boomgaardt, the way it works,
7 sometimes frustrating for witnesses, is there's no
8 soliloquies. You don't get to take the witness stand and
9 tell what you think is relevant. The lawyers decide what's
10 relevant subject to the Court's rulings, so he asked the
11 questions, just like Mr. Johnston asked the questions. If
12 you just answer the questions. If there's something else
13 that you think is important, presumably on redirect, the
14 Government counsel will ask you. If they don't ask you about
15 it, it means they didn't want to ask you about it. And so
16 you just answer the questions.

17 Go ahead.

18 BY MR. WEINBERG:

19 **Q.** There's a man named Steve Smit who ran the London office;
20 is that correct?

21 **A.** That's correct. Yeah, he ran Global Markets for State
22 Street in London. Yeah.

23 **Q.** Mr. Pennings told you that he had discussed the new
24 business model of charging undisclosed spreads in addition to
25 low fees with Mr. Smit, and Mr. Smit was knowledgeable and

1 accepted that; is that correct?

2 **A.** That's what Mr. Pennings told me, yes.

3 **Q.** And you weren't at the conversations between Mr. Smit and
4 Mr. Pennings, sir. You were relying on Mr. Pennings?

5 **A.** That's right. I didn't sit in on European management
6 committee meetings. That was sort of a level up from me. So
7 yes, I was relying on Mr. Pennings.

8 **Q.** And Mr. Pennings had conversations with Mr. McLellan that
9 you didn't participate in?

10 **A.** Oh, certainly, yes. Absolutely.

11 **Q.** And, therefore, the corollary of that is, you don't know
12 whether Mr. Pennings told Mr. McLellan the same thing that
13 Mr. Smit had approved, do you?

14 **A.** I don't know exactly what was told to Mr. Smit and I
15 don't know all of the conversations that Mr. Pennings had
16 with Mr. McLellan, either.

17 **Q.** So let me ask my question. You don't know whether or not
18 Mr. Pennings told Mr. McLellan that the head of the London
19 office of State Street Global Markets knew of and approved
20 the business pricing of undisclosed spreads and fees,
21 correct?

22 **A.** I don't know that, no.

23 **Q.** And you don't know whether or not Mr. Pennings told Mr.
24 McLellan on these calls you were not part of that he had gone
25 to the UK legal department, they knew of, and also approved

1 Mr. Pennings's business model of charging certain clients an
2 undisclosed markup on top of a fee, correct?

3 **A.** Yeah. By definition, if I wasn't on a call, I can't
4 attest to any knowledge of that call.

5 **Q.** And Mr. Pennings never told you that he concealed from
6 Mr. McLellan that he, Pennings, went to the executive
7 management of the Europe management group and told them about
8 the new business model of charging undisclosed spreads and
9 fees and that they had proof, correct?

10 **A.** That's correct.

11 **Q.** Mr. Pennings ever tell you that they had a conference
12 call when they were remodeling a transition management
13 agreement, that he had told four lawyers; two from State
14 Street's internal, two from an outside firm named Herbert
15 Smith. He had told all four of them that the way that he was
16 charging certain clients was to add an undisclosed spread to
17 a fee?

18 **A.** He didn't make the assertion in that much detail, but,
19 yes, he did say around that time, we had to reword the
20 contract because of new European laws. That those
21 conversations were happening with those lawyers, as you say,
22 and that the topic of this charging model did come up, yes.
23 That's what he told me.

24 **Q.** So Pennings told you that he had made a disclosure to UK
25 legal and they said okay, correct?

1 **A.** Yes.

2 **Q.** That he made a disclosure to the management committee of
3 the broker-dealer and they said it was okay, correct?

4 **A.** Yes.

5 **Q.** That he made a disclosure to outside counsel for State
6 Street in London and the law firm of Herbert Smith. They
7 said okay.

8 **A.** Yes, he made all of those statements to me, yes.

9 **Q.** And he said to you that UK compliance was okay with the
10 new business model, correct?

11 **A.** He said he had spoken to them and yes, that it had been
12 okayed by them, as well.

13 **Q.** And that was part of what gave you some comfort that you,
14 Rick Boomgaardt, could participate with Mr. Pennings in the
15 charging of undisclosed spreads to clients, correct?

16 **A.** It was part of what gave me some comfort, yes.

17 **Q.** At that point, Mr. Pennings had been promoted to the head
18 of all portfolio solutions in London, correct?

19 **A.** Yes, that's right. Ross promoted him, yeah.

20 **Q.** He was the -- Steve Smit promoted him; isn't that
21 correct?

22 **A.** No, I don't think it is, sir.

23 **Q.** It's your testimony that Mr. McLellan promoted
24 Mr. Pennings?

25 **A.** Mr. McLellan was Mr. Pennings' direct line manager. He

1 was the one responsible for promotion. I had a conversation
2 with Mr. Pennings after Ed got promoted and saying that Ed
3 was being promoted by him and part of the reason for that was
4 I hadn't been at State Street long enough to be in the
5 running for that -- for that position myself.

6 **Q.** Let's go back to your conversations with Mr. Pennings.
7 How frequently did he tell you that UK legal had been advised
8 of and had okayed the business model of charging nondisclosed
9 spreads on top of fees?

10 **A.** I don't know how frequently. I mean, he made that
11 assurance and he made it at multiple times as we went through
12 the transitions that we testified over about -- over the last
13 couple of days.

14 **Q.** How often did Mr. Pennings tell you that the contracts
15 for the clients in question authorized, approved, did not
16 prohibit the charging of undisclosed spreads on top of fees?

17 MR. JOHNSTON: Objection. Compound question.

18 THE COURT: Overruled.

19 THE WITNESS: Sorry, could you repeat it, please?

20 MR. WEINBERG: Sure.

21 BY MR. WEINBERG:

22 **Q.** How often did Mr. Pennings tell you about the contracts
23 entered into between State Street and the transition clients
24 that had been the subject of your direct examination
25 authorized, approved, or did not prohibit the charging of

1 undisclosed spreads on top of fees?

2 MR. JOHNSTON: Objection. Compound question.

3 THE COURT: Overruled.

4 THE WITNESS: Again, I don't know how many times,
5 but certainly that assurance -- I had that assurance from him
6 for each of those -- each of those transitions.

7 BY MR. WEINBERG:

8 Q. You and he reviewed the Royal Mail contract together in
9 his office, did you not?

10 A. Not until afterwards, not before Ed.

11 Q. It's your testimony that he never read out to you
12 section 6-1 and 6-2 in a discussion that it was okay to
13 charge Royal Mail?

14 A. And he read out bits of our -- the standard contract, as
15 well. So it was certainly bits that he read out, but that's
16 not a contract review. That was him, I guess, telling me
17 what the -- what the specifics were, but yeah.

18 Q. It's not a contract review, but he was telling you the
19 specifics of the contract?

20 A. I didn't read the contract myself, from beginning to end.

21 Q. He was reading it.

22 A. He had read it. I guess he at least read that bit that
23 he read out to me. Yes, sir.

24 Q. He was reading from a contract, read you legal language,
25 and said that that legal language in the contract authorized

1 the charging of Royal Mail with an undisclosed spread,
2 correct? That was his interpretation?

3 **A.** Yes, I think that's correct.

4 **Q.** And likewise, for NTMA, you recall, on a tape recording
5 that the Government played for you several days ago, Ed
6 Pennings saying to you, you read the NTMA contract to make
7 sure it doesn't prohibit an undisclosed spread, because we
8 are going to take one, correct?

9 **A.** Yes, that was on the -- that was on the tape. That was
10 for the periodic notice, I guess, rather than the main
11 agreement, yes.

12 **Q.** It didn't prohibit?

13 **A.** There was nothing that specifically prohibited it, no.

14 **Q.** And likewise, you had conversations with Mr. Pennings
15 about some of the other contracts, be it Sainsbury's or
16 Eircom, and Mr. Pennings, whose remit it was to review
17 contracts, advised you that in his understanding, as your
18 immediate supervisor and the head of transition management of
19 PSG in London, those contracts proved -- did not prohibit the
20 taking of undisclosed spreads on top of fees, correct?

21 **MR. JOHNSTON:** Compound question.

22 **THE COURT:** It's a long question. It's a very long
23 question. Why don't you break it apart?

24 **MR. WEINBERG:** I'll break it out, Your Honor.

25 **BY MR. WEINBERG:**

1 **Q.** Mr. Pennings advised you that, in his judgment, correct,
2 the contracts relating to Sainsbury's and Eircom also did not
3 prohibit the taking of undisclosed spreads, correct?

4 **A.** That was my understanding at the time that I got from Ed,
5 yes, but I didn't check any of those contracts, myself,
6 sadly.

7 **Q.** I didn't ask you. Mr. Pennings is telling you, he, whose
8 responsibility it was to enter agreements had checked the
9 contracts, they authorized the taking of nondisclosed spreads
10 on top of fees, correct?

11 **A.** Or certainly didn't prohibit them, anyway, but yes,
12 allowed by the contract would probably have been his
13 terminology, yes.

14 **Q.** So let's go back to your written statement of
15 February 2012, at a time that, in your words to Mr. Johnston,
16 you were in a self-preservation mode, trying to keep your
17 job, correct?

18 **A.** Okay. Yeah.

19 **Q.** There were lies in that written statement; were they not?

20 **A.** There was -- I wasn't truthful about what my role in all
21 of this was.

22 **Q.** Well, let's go back to them. "At all times I conducted
23 myself with honesty and integrity." That's what you said?

24 **A.** Uh-huh.

25 **Q.** Is that a deception, a lie, or the truth?

1 **A.** It is -- it's not correct. I knew these were -- I knew
2 these were wrong. We had told the client we weren't going to
3 take commissions and we did.

4 **Q.** So it's either truthful or not truthful?

5 **A.** That's not truthful. It wasn't at all times. I strive
6 to be -- I strive to be honest and show integrity and I let
7 myself down and certainly those clients.

8 **Q.** But you let State Street down, because at the very time
9 that you were trying to be truthful and considered your own
10 integrity, you were assuring them that "I never acted to
11 deliberately mislead a client." Those were your words on
12 February 1, 2012, correct?

13 **A.** Yes.

14 **Q.** It was your words that "at all times I acted honestly and
15 with integrity," correct?

16 **A.** Yeah.

17 **Q.** And that "how important honesty and integrity are to me,"
18 correct?

19 **A.** Yes. They are important to me.

20 **Q.** "Honesty and integrity are core principles to me," you
21 wrote, correct?

22 **A.** And they are.

23 **Q.** So at the moment you're writing that honesty is a core
24 principle, you're lying and deceiving for the purpose of
25 keeping your job, correct?

1 **A.** I am trying to save my job, sir. Yes. That's right.
2 Honesty and integrity are important principles for me.

3 **Q.** Were they important on February 1, 2012, when you were
4 assuring State Street that you never deceived the client?

5 **A.** Yes, they were. But that's -- you know, I'm -- I'm not
6 proud of playing down my role in this. I'm really not, which
7 is one of the reasons that I've taken responsibility for the
8 role I've had in it.

9 **Q.** This has nothing to do with your role, does it, Mr.
10 Boomgaardt? It has everything to do with whether or not, in
11 your mind, on February 1, 2012, you deceived clients. You
12 said you didn't. Today you said you did. Which is it?

13 **A.** We have -- we deceived clients all the way through this.

14 **Q.** So today, you're saying that you did deceive clients.
15 Could we, therefore, agree that your words to State Street,
16 when you were assuring them of how important honesty and
17 integrity were to you, that your words, "I never deceived the
18 client," were a lie?

19 **A.** They're not true.

20 **Q.** A lie made to keep your job, correct?

21 **A.** With the view to keeping my job, yes, sir. That's right.

22 **Q.** Today, your freedom is on the line, is it not,
23 Mr. Boomgaardt?

24 **A.** Yes. Yeah, it is.

25 **Q.** You want the Government to help you go home to London to

1 your family and two young children, rather than to go to the
2 inside of the United States prison, an ocean away from your
3 family, correct?

4 **A.** That's correct, but I reached out to them, sir. They
5 didn't come and find me.

6 **Q.** You reached out to them with a desire not to be
7 prosecuted, correct?

8 **A.** Yeah.

9 **Q.** You wanted finality?

10 **A.** Yeah, and I do want finality in this. I came over here
11 and -- you know, with no knowledge of them having me as a
12 person of interest, or -- my interest is to set the record
13 straight. I'm here taking responsibility for my actions for
14 this, sir. I've pled guilty to a crime on the back of this.

15 **Q.** Mr. Boomgaardt, let's go back to 2014, before you came
16 over here voluntarily, because you read something in a State
17 Street filing. Isn't it a fact that four months before you
18 came over here, you were interviewed by the City of London
19 Police?

20 **A.** Yes, that's correct.

21 **Q.** Isn't it a fact that when you talked to clients, these
22 were European or mideastern clients, correct?

23 **A.** Yeah, that's true.

24 **Q.** You were concerned that you were being criminally
25 investigated in the City of London Police, right?

1 **A.** Well, I was more than concerned. I was being criminally
2 investigated by the City of London Police, sir. Yes.

3 **Q.** For the very same things that Mr. Frank and Mr. Johnston
4 prosecuted you for, correct?

5 **A.** Certainly the same behaviors around the same transitions.
6 Yes, sir.

7 **Q.** And you told the City of London Police that you acted in
8 good faith, did you not?

9 **A.** Which -- are we talking about a specific document or --

10 **Q.** We're talking about a written statement you made to the
11 City of London police four months before you did a 180-degree
12 turn and talked to the Government and said you were guilty.
13 You recall that, don't you?

14 **A.** I recall writing a -- a very short document in response
15 to very specific disclosure that was given to me by the City
16 of London Police, yes.

17 **Q.** Which asserted that you were not guilty of fraud,
18 correct?

19 **A.** It was in response to the very specific disclosure that
20 they gave me. It wasn't in response to -- it wasn't a
21 blanket statement of there's nothing, I haven't done
22 anything. It was in response to a very specific set of
23 disclosures that they had given me. It was also only about
24 two pages long. I've been testifying for what, eight hours?

25 **Q.** So in other words, when you were asked to make a short

1 written statement, it's okay to lie, but when you testify for
2 eight hours, you can tell the truth?

3 **A.** It was in response to a very specific question that they
4 were asking, a very specific disclosure. Again, I'm not
5 proud of having played down my own involvement in this, sir,
6 I'm really not.

7 MR. WEINBERG: May I have a moment, Your Honor?

8 THE COURT: You may.

9 BY MR. WEINBERG:

10 **Q.** Do you recall writing to the City of London in the short
11 statement that you, today, say is the truth, "I acted
12 honestly, because I believe the assurances I was given by
13 people I trusted."

14 **A.** I did believe, to a certain degree, yeah, they had the
15 assurances. But I am here to put my hand up and have done
16 already than I am more culpable than what I've said in that
17 statement and I think we covered that. It's -- I did allow
18 myself to get comfortable because of the assurances that I
19 was given by both Edward Pennings and Ross McLellan and that
20 is where those stories -- that belief comes from. I wanted
21 nothing more than to really believe that and hope that it was
22 true, but I knew it wasn't.

23 **Q.** Do you recall saying "I did not have any part to play in
24 the formulation of the idea to charge State Street clients
25 with a spread"?

1 **A.** This was not my plan, sir.

2 **Q.** Do you recall being on tape-recorded calls with
3 Mr. Pennings, on March of 2010, March 2, 2010, saying, "We
4 need to figure out some way to structure commissions for
5 KIA," which was demanding of you and Mr. Pennings that there
6 be no -- there be zero commissions, zero fees?

7 **A.** Are you referring to the conversation -- the call that
8 was played in this courtroom?

9 **Q.** Yes, Mr. Boomgaardt.

10 **A.** That was referring to a potential Japanese equity
11 transition. It wasn't related to that transition, but we did
12 have that conversation. I think you'll also hear that it was
13 if the client is okay with it and the client agrees with it.
14 That was not my plan. It really wasn't. That came from --
15 this was a plan that was dictated to me and certainly I was
16 necessary in making it work.

17 **Q.** Mr. Boomgaardt, let's talk for a second about these six
18 clients. The European clients; KIA, Royal Mail, NTMA,
19 Sainsbury's, Eircom, and Dutch Doctors. You had
20 conversations with how many of the representatives of those
21 clients?

22 **A.** Probably all of them, in one way or another.

23 **Q.** Mr. Pennings had conversations with how many of those
24 clients?

25 **A.** Again, all of them, in one way or another.

1 Q. Mr. McLellan had conversations, one to one, with how many
2 of those clients?

3 A. I don't know. None that I'm aware of, but I'm not sure.

4 Q. You're not aware that he ever met Das, or any of the
5 other representatives of the KIA, correct?

6 A. I'm not. I wasn't with him if he met them. No, sir.

7 Q. Mr. Pennings regularly went to the Mideast and had many
8 conversations with Das, who was the representative of the
9 KIA, right?

10 A. That's right. The Middle East was part of Ed's coverage
11 area, yes, so he was there frequently.

12 Q. Dutch Doctors, Mr. Harden, did you have conversations
13 with him?

14 A. Yes, certainly e-mail conversations, but probably on the
15 phone, as well.

16 Q. Did Mr. Pennings, to your knowledge, had conversations
17 with Mr. Harden of the Dutch Doctors, correct?

18 A. Yes.

19 Q. You and Mr. Pennings discussed the Dutch Doctor
20 transition, correct?

21 A. Yes.

22 Q. Mr. McLellan, to your knowledge, never met Mr. Harden,
23 correct?

24 A. Correct. I don't know that he did or didn't.

25 Q. Never saw an e-mail from Mr. McLellan to Mr. Harden,

1 correct?

2 **A.** Not that I can recall, no.

3 **Q.** Never saw an e-mail from Mr. McLellan to Das or anyone at
4 the KIA, correct?

5 **A.** Again, not that I've seen. No, sir.

6 **Q.** Royal Mail, Ian McKnight, negotiated an agreement with Ed
7 Pennings, correct?

8 **A.** Yes. Ian McKnight was the main client contact at Royal
9 Mail, yeah.

10 **Q.** You had certain contacts with Mr. McKnight, did you not?

11 **A.** I did.

12 **Q.** You have no knowledge that Mr. McLellan ever met
13 Mr. McKnight, did you?

14 **A.** I have no knowledge that he has or hasn't, no.

15 **Q.** No knowledge that Mr. McLellan ever e-mailed
16 Mr. McKnight, correct?

17 **A.** Correct.

18 **Q.** No texts between Mr. McLellan or Mr. McKnight or Das or
19 the representative of Dutch Doctors, to the best of your
20 knowledge?

21 **A.** Not that I've ever seen.

22 **Q.** You've never been on an investor call with Mr. McLellan
23 and either Das, KIA, McKnight, Royal Mail, Harden, or Dutch
24 Doctors, correct?

25 **A.** Yes. That's correct, to the best of my knowledge, yes.

1 **Q.** You have no knowledge, despite your years of thinking
2 about this case, of Mr. McLellan ever having any face-to-face
3 or any one-to-one contact with any of those three clients?

4 **A.** I don't recall Ross meeting face-to-face with any of
5 those clients you mentioned, no.

6 **Q.** How about the fourth client, NTMA? You read a lot of
7 conversations, a lot of e-mails with Killian Buckley,
8 correct?

9 **A.** That's right.

10 **Q.** Mr. Pennings certainly had lots of conversations with
11 Killian Buckley?

12 **A.** He did have conversations with Killian Buckley, as well.
13 Yes.

14 **Q.** You have no knowledge that Mr. McLellan ever met Mr.
15 Buckley, or any other representative of the NTMA, do you?

16 **A.** Not to my knowledge. I don't have any knowledge whether
17 he did or didn't.

18 **Q.** No e-mails to your knowledge between Mr. McLellan and any
19 of these four clients, the NTMA being the fourth?

20 **A.** None that I was copied on in any way, I don't think, no.

21 **Q.** No texts that you've ever seen?

22 **A.** No.

23 **Q.** No participation in any of the conference calls between
24 NTMA and State Street?

25 **A.** Not that I can recall, no.

1 **Q.** Okay. Let's talk about the fifth client, Sainsbury's.
2 They had a consultant, did they not?

3 **A.** Yes, they did.

4 **Q.** Who was the consultant?

5 **A.** It was Aon Hewitt for that one, I believe.

6 **Q.** Dean Johnson was the representative of the Sainsbury's
7 fund?

8 **A.** That's right. He was our main contact at the Sainsbury's
9 fund, itself.

10 **Q.** You have contact with Mr. Johnson?

11 **A.** I've met Mr. Johnson and spoken to him, yes.

12 **Q.** You had contacts with the consultant, correct?

13 **A.** Yes.

14 **Q.** Mr. Pennings met with Mr. Johnson?

15 **A.** I believe so.

16 **Q.** Communicated with him by e-mail?

17 **A.** Again, I believe so, yeah.

18 **Q.** Communicated with the consultants for Sainsbury's,
19 correct?

20 **A.** Yes, I believe he did. I certainly did.

21 **Q.** You're not aware of Mr. McLellan ever meeting
22 Mr. Johnson, are you?

23 **A.** I'm not aware of him meeting Mr. Johnson, no.

24 **Q.** You're not aware of Mr. McLellan discussing any
25 Sainsbury's transition with any of the consultants of

1 Sainsbury's, are you?

2 **A.** No, I'm not aware of that.

3 **Q.** No e-mails that you've seen?

4 **A.** Not that I can remember, sir. It was a long time ago.

5 **Q.** No texts you've seen?

6 **A.** No. I didn't -- the text question, I've never seen any
7 of Ross' texts, unless he sent them to me, sir.

8 **Q.** No participation on the conference call?

9 **A.** Not that I can recall.

10 **Q.** And the sixth client at issue, Eircom, were they
11 represented by consultants?

12 **A.** They were, yes.

13 **Q.** You had conversations with them?

14 **A.** The consultants and the client, both, yes.

15 **Q.** Mr. Pennings had conversations with them, either by
16 e-mail, or in person, or on the phone?

17 **A.** Yup.

18 **Q.** And to your knowledge, Mr. McLellan had no conversations
19 with any consultant for or any representative of Eircom,
20 correct?

21 **A.** No. I mean, he would have had conversations with Mercer,
22 but not specifically that I know that had anything to do with
23 the Eircom transition specifically.

24 **Q.** No e-mails that you've seen between Mr. McLellan and
25 Eircom, correct?

1 **A.** Not that I can recall.

2 **Q.** No participation in investor call with Eircom, as you
3 recall, correct?

4 **A.** Again, not that I recall.

5 **Q.** That's all six, right? KIA, Royal Mail, NTMA, Eircom,
6 Sainsbury's, and Dutch Doctors?

7 **A.** Those are the ones that I've been testifying about, yes.

8 **Q.** So let's go back to your state of mind on 2012, where
9 you're defending your job, rather than your liberty. Do you
10 recall saying "I have breached no standard of conduct" in
11 your writing to State Street?

12 **A.** Yes.

13 **Q.** Do you recall writing to State Street, "I behaved in good
14 faith at all times in my communications with the client"?

15 **A.** Yes, I remember writing that.

16 **Q.** Those are your words you chose to write to communicate to
17 State Street, to deceive State Street, to keep your job,
18 correct?

19 **A.** I think I've already answered that. Though, yes.

20 **Q.** At this time, when you were fighting for your job, City
21 of London Police were not involved, were they, to your
22 knowledge?

23 **A.** Not at that point, I don't believe.

24 **Q.** More important, going back to 2010 and 2011, during these
25 six transitions or seven transitions for six clients that you

1 participated in, you did not believe when you were helping
2 Mr. Pennings, charging undisclosed spread that Mr. Pennings
3 said was okay by contract, that you were committing a fraud,
4 did you?

5 **A.** I didn't think about it in those terms. I certainly knew
6 what we were doing was not right. However you want to define
7 that.

8 **Q.** And you've repeatedly said that you were not comfortable
9 with the new business model of State Street, correct?

10 **A.** Yeah. That plan took us a long way away from what we
11 were telling our clients we were going to do.

12 **Q.** But you never -- you did not believe at the time you did
13 it, that what you were doing was in violation of a contract,
14 correct?

15 **A.** I didn't think about it in those terms. It wasn't a
16 specific thought. What I thought was in violation of what
17 was the right thing to do for the client and our fiduciary
18 duty to the client.

19 **Q.** You didn't believe that you were committing a criminal
20 act, did you?

21 **A.** Again, I didn't think about in that way, but you know,
22 I'm thinking about it now in that way, but no, I didn't at
23 the time. It wasn't that I didn't think it was -- I knew it
24 was wrong and I knew it was the wrong thing to do, and that
25 wrongness is a criminal act. So it wasn't -- it wasn't my

1 manner of thinking, but it was a -- yes, this is the wrong
2 thing to do. We're in breach of what we've told the clients
3 we're going to do. This is ethically the wrong thing to do.
4 As it turns out, it's also criminally the wrong thing to do,
5 but that wasn't the first thing that popped into my mind.

6 MR. WEINBERG: I move to strike, Your Honor. The
7 question was what he thought in 2010 to 2011.

8 THE COURT: Overruled.

9 BY MR. WEINBERG:

10 Q. Did you believe in 2010, when you and Mr. Pennings added
11 the markup for KIA, that it was on your mind at that time
12 that you were intentionally, deliberately committing a
13 criminal act? Yes or no?

14 A. It was in my mind that this is the wrong thing to do. I
15 remember driving home from work after sitting and putting
16 those spreads on the trades with Ross beside me, going what
17 we've done is not right here.

18 Q. Did you resign?

19 A. No.

20 Q. Did you take this issue to Mr. Smit?

21 A. No, I didn't.

22 Q. Did you tell Mr. McLellan, in March of 2010, when you
23 decided to charge a markup to KIA, we are committing a crime,
24 we're committing a fraud?

25 A. No.

1 **Q.** Did you take it up to Mr. Puth, Mr. McLellan's superior
2 at the State Street Global Markets and tell him Mr. Pennings
3 just asked me to commit a crime and I don't like it?

4 **A.** No, I didn't and I wish I had done it at the time.

5 **Q.** Did you go to UK legal and tell them that you were being
6 asked to commit what, today, in 2018 you say you now think
7 was something wrong and a crime?

8 **A.** No.

9 **Q.** Did you go to UK compliance and register your complaint?

10 **A.** No, I didn't take any action on it until the 26th of
11 August that we went through. I wish I had done. I was being
12 asked to do it by people that I respected and trusted and,
13 you know, I wish I had been stronger and stood up sooner to
14 that.

15 **Q.** Bottom line, you didn't resign and you didn't complain
16 and you participated with Mr. Pennings in charging the
17 spread -- and let's focus on KIA for a minute, correct?

18 **A.** I went along with it. That doesn't mean that I thought
19 it was the right thing to do.

20 **Q.** Okay. KIA is -- we can take one of these transitions and
21 we'll go to the others probably tomorrow. KIA was a huge
22 sovereign wealth fund, were they not?

23 **A.** That's right. Yup.

24 **Q.** Hundreds of billions of dollars of assets, correct?

25 **A.** I don't know. I don't know exactly the size, but it's

1 safe to assume that. Yes, sir.

2 **Q.** It's one of the world's biggest?

3 **A.** It's one of the world's biggest. Yeah.

4 **Q.** One of the bank's biggest clients?

5 **A.** That's correct.

6 **Q.** And they were unmistakably, unconditionally telling
7 Mr. Pennings that the only way that State Street is going to
8 get our next transition from \$2 billion in bonds is to
9 propose zero commissions, zero fees, correct?

10 **A.** That was my understanding, from what Ed told me of his
11 conversations with the KIA. That's right.

12 **Q.** Mr. Pennings also told you that other banks were offering
13 to do the KIA transition for nothing; zero fees, zero
14 commissions?

15 **A.** That was also the understanding that he gave me, yup.

16 **Q.** And nothing might be the wrong word, because it's not
17 your understanding that the competitors of State Street were
18 looking to do a \$2 million transition for free; is that
19 correct?

20 **A.** Not for free, no. They might have been willing to do it
21 for zero commission.

22 **Q.** But they would have made their money from trading,
23 correct?

24 **A.** I assume so.

25 **Q.** You worked at Goldman Sachs, did you not?

1 **A.** I did work at Goldman Sachs.

2 **Q.** They had a different business model than State Street,
3 didn't they?

4 **A.** Yes.

5 **Q.** But they made a lot of money, didn't they?

6 **A.** Yes, they had different ways of making money out of
7 transition management business than what State Street did.

8 **Q.** They would propose low fees, correct?

9 **A.** Are we talking about Goldman Sachs?

10 **Q.** Yes.

11 **A.** I worked at Goldman Sachs nearly 20 years ago.

12 **Q.** You knew, as a professional in the transition management
13 field in London, that the competitors like Goldman Sachs in
14 Europe were charging very low explicit fees in 2010, correct?

15 **A.** We saw some very aggressive explicit fees in 2010. Yes,
16 sir. That's correct. I wouldn't -- not necessarily Goldman,
17 but certainly Nomura was our understanding.

18 **Q.** Citibank?

19 **A.** Yeah. I mean, these were all competitors.

20 **Q.** And your competitors were going to your clients, or your
21 potential clients, like NTMA and KIA, and trying to meet what
22 the client wanted, which is low or no explicit fees, correct?

23 MR. JOHNSTON: Objection, Your Honor. Statement as
24 to what the clients were trying to do -- the competitors,
25 sorry.

1 THE COURT: It's as to what his understanding is,
2 overruled.

3 THE WITNESS: I don't know whether clients wanted
4 the low commissions or not. KIA, in that particular deal, I
5 believe did tell Ed they wanted to do it for zero
6 commissions. So yeah.

7 BY MR. WEINBERG:

8 Q. State Street is not a not for profit, correct?

9 A. No, it's not.

10 Q. They're a bank that looks to make money, correct?

11 A. Yeah.

12 Q. Its' shareholders and they're a public company and one of
13 their objectives, as you understand it, is to make a profit,
14 correct?

15 A. That's correct.

16 Q. State Street was not going to do a \$2 billion transition,
17 which meant selling \$2 billion of one asset, and buying \$2
18 billion of another for free, correct?

19 A. Probably. We would lose money if we did that.

20 Q. Yes.

21 A. There may be reasons for doing it and we certainly saw
22 competitors trying to buy market share by doing transitions
23 for less than cost, but I had never seen that at State
24 Street.

25 Q. State Street was already credentialed by KIA. They were

1 on their account, correct?

2 **A.** That's right.

3 **Q.** You had prior transitions with KIA?

4 **A.** We had done KIA transitions before, yes.

5 **Q.** Now, KIA could afford consultants, could they not?

6 **A.** I assume so. I don't know what their policy on
7 consultants was.

8 **Q.** Do you have any doubt that they had the financial assets
9 to afford to have consultants?

10 **A.** I don't doubt it, but -- I don't know.

11 **Q.** They could afford analysts, correct?

12 THE COURT REPORTER: I'm sorry, they could afford
13 what?

14 MR. WEINBERG: Analysts. Bond analysts, bond
15 professionals.

16 **A.** They could, they had investment professionals working
17 there. So evidently, yes.

18 **Q.** Sure. And you had no reason to believe that when Das
19 told Pennings that we need to see zero commissions, or you're
20 not getting transition 115, that Das believed that State
21 Street was going to do this for free, correct?

22 MR. JOHNSTON: Objection. Asking for what he
23 believes the client believed.

24 MR. WEINBERG: With him talking about his
25 understanding?

1 THE COURT: What his understanding of what Das
2 believed, not what Das actually believed. So it's his state
3 of mind, what were you thinking.

4 THE WITNESS: Sorry, could you repeat the question
5 for me? Sorry.

6 BY MR. WEINBERG:

7 Q. Yes. You did not believe that Das, the KIA, believed
8 that State Street, a giant transition manager, credentialed
9 on the annals, had done prior deals, was going to do
10 \$4 billion of trading of bonds for free, correct?

11 A. I guess so. I had -- as I think I alluded to earlier, I
12 had concerns about his sophistication, but no. I don't think
13 he expected us to do it for free, but as he was -- well, as
14 Ed told him, that we would somehow make money in another way
15 off this, but that it wasn't going to come from his pocket.

16 Q. You walked in on a phone conversation where Mr. Pennings
17 was telling Das, we're going to make money from the spread,
18 correct?

19 A. Yes.

20 Q. You repeatedly were told by Mr. Pennings during this time
21 period that Das is okay with us making money from a spread,
22 correct?

23 A. That's what Ed told me, yes.

24 Q. Told you that Das was happy for State Street to make
25 money, as long as they met the implementation shortfall,

1 correct?

2 **A.** He didn't mention anything about the implementation
3 shortfall and I don't think any client would be happy to have
4 an undisclosed commission taken out of them. But all I can
5 say is that I walked in on that conversation and Ed did tell
6 him that we would take a spread on this. He also
7 subsequently told him that that spread would somehow be taken
8 from the other side and not come out of his pocket, which is
9 incorrect.

10 **Q.** Which is ridiculous, correct? You don't take a million
11 dollar spread from \$4 billion of trades from the other side,
12 do you, as a routine of practice?

13 **A.** We had never had a mechanism where -- taking money or
14 compensation from the other side of a trade before.

15 **Q.** And these analysts and consultants that were accessible
16 to KIA would know that that was not the routine and practice
17 in the bond market in Europe, in 2010, correct?

18 MR. JOHNSTON: Objection. He's --

19 THE COURT: Sustained as to what they would know.

20 BY MR. WEINBERG:

21 **Q.** Do you recall having a telephone conversation that you
22 heard several days ago with Greg Spyropoulos?

23 **A.** Spyropoulos.

24 **Q.** Spyropoulos.

25 **A.** Yes, I do.

1 Q. He was a US trader?

2 A. Yes, he was a trader based in Boston. A bond trader
3 based in Boston.

4 Q. Do you recall what you said about KIA during that call?

5 A. Yeah. Exactly what we said, that they had agreed that we
6 could take a spread on these bonds.

7 Q. We could take a spread on these bonds. At the time that
8 you were talking to Mr. Spyropoulos about marking up the
9 bonds, correct?

10 A. That's right.

11 Q. You didn't tell Mr. Spyropoulos, KIA said it was okay for
12 us to take a spread, but only if it came from the other side,
13 did you?

14 A. I didn't qualify the remark. No, sir.

15 Q. In fact, you were telling him that in the context of
16 telling him we want to see the highs and lows of the day,
17 correct?

18 A. That's right.

19 Q. And he sent you the highs and lows, or you were sent the
20 highs and lows of the day, as you sat in London, correct?

21 A. Yes, he did send that file across, yes.

22 Q. And you've looked at Government Exhibit -- at Exhibit 35,
23 which is the client's side prices, correct?

24 A. That's right, yup.

25 Q. And you've also had occasion to look, have you not, at

1 the highs and lows that were sent to you by the United States
2 at your request on June 15th, correct?

3 **A.** The Tradeweb data, the file that came across from Greg,
4 is what you're referring to?

5 **Q.** Yes.

6 **A.** I did see that.

7 **Q.** Isn't it a fact that what you saw, to your surprise,
8 Mr. Boomgaardt, is that the client side prices charged to the
9 KIA were higher than the highs of the day, correct?

10 **A.** That was only looking at the Tradeweb data. We were also
11 looking at Bloomberg data in -- which is a more accessible
12 source.

13 **Q.** So whatever the data is, it came as a surprise to you
14 two days ago, when you looked and compared Exhibit 35 and
15 Exhibit 33, what the client saw was 35 and what the trade
16 data is is 33, and so the client was being charged prices
17 higher than the high/low range, correct?

18 **A.** They were a little bit higher than those Tradeweb prices,
19 yes.

20 **Q.** Surprised you, didn't it?

21 **A.** It was our methodology for figuring out those prices was
22 to make them not higher than the high, so what it means is
23 that the Bloomberg data that we can't see showed different
24 high prices than the trade web data what Greg sent across.

25 **Q.** Or what it meant that Das was expecting markups, and Mr.

1 McLellan, who was with you, did not care whether or not
2 Mr. Das was getting client side prices that he could check
3 against the data and see it exceeded the high?

4 MR. JOHNSTON: Objection. Compound question, calls
5 for speculation.

6 THE COURT: Sustained as to compound question.

7 BY MR. WEINBERG:

8 **Q.** When was the first time you compared Exhibit 35 and the
9 client side prices and the market data?

10 **A.** Well, the first --

11 **Q.** Two days ago?

12 **A.** Well, the first time we did it was about eight years ago,
13 sir, when it first came across, right?

14 **Q.** Second time was two days ago, right?

15 **A.** I believe so. Yeah.

16 **Q.** Up until that time, it was your understanding that you
17 had received the high and low range and it set the price for
18 the client to see, within the high, correct?

19 **A.** Yeah. And that, I guess, that -- I was surprised that
20 the Tradeweb data would have been different than the
21 Bloomberg data, but we don't have --

22 **Q.** Have you seen the Bloomberg data?

23 **A.** I was going to say we don't have access to the Bloomberg
24 data. I haven't seen it.

25 **Q.** So you don't know what the Bloomberg data said as you sit

1 here now eight years later?

2 **A.** No, I don't. No, but I know we looked at it.

3 **Q.** But if you're just saying the Bloomberg data is different
4 than the data that you saw in Exhibit 33?

5 **A.** It could be. I don't know that it's different, but it
6 might be. Tradeweb and Bloomberg didn't necessarily agree.

7 **Q.** It might not be.

8 **A.** It might not be, but it might be.

9 **Q.** But the data that you received from the United States was
10 what the Government showed you, Exhibit 33, correct?

11 **A.** That's right.

12 **Q.** And when you looked in the US Attorney's Office, after my
13 opening, and tried to determine whether or not the prices
14 sent to Das and the KIA were within the high/low range, you
15 told the Government they're higher than the high?

16 **A.** Yeah, they are slightly higher than the high, the
17 trade -- the Tradeweb high.

18 **Q.** And therefore, some client, who's looking at them and
19 checking them against the very same high/lows you got, could
20 see that they're being charged more than the high, correct?

21 **A.** If they had access to Tradeweb, but they're more likely
22 to check that against Bloomberg.

23 **Q.** Which could have been the same thing. You don't know,
24 because you don't remember, correct?

25 **A.** That's right. It could have been the same, could have

1 been different.

2 **Q.** You were told Das expected State Street to make money,
3 correct?

4 **A.** Yeah. That was -- that's what Ed said.

5 **Q.** That's what Ed said. And here you have Mr. McLellan who
6 was sitting with you in London and setting the prices, the
7 client side prices, sending -- setting prices higher than the
8 high/low range, which would have sent a message, if anybody
9 compared them, that we're paying a markup, correct?

10 **A.** Again, I would need to see the other analysis that we did
11 against the Bloomberg prices to agree with you there.
12 It's -- it certainly looks as though those prices are higher
13 than the Tradeweb highs that we sent through.

14 **Q.** The Tradeweb highs are what you got from Boston at your
15 request. Send us the high lows, you got the Tradeweb
16 highs --

17 **A.** It was at Ross' request that this --

18 MR. JOHNSTON: Objection. Compound.

19 THE COURT: I don't think that was compound. You
20 can answer.

21 MR. WEINBERG: Then it's a yes.

22 THE WITNESS: The request for the Tradeweb prices
23 came from Ross and they did come, you're right. And those
24 prices that we then booked out to the clients are higher than
25 what's sent across. As I'm saying, there is a missing piece

1 of that analysis.

2 **Q.** A missing piece that might be consistent with that amount
3 analysis or might not, you don't know?

4 **A.** No. But my experience was Tradeweb and Bloomberg were
5 more often different than the same, but they could have been.
6 But it's a -- all I'm saying is there's a missing piece of
7 analysis and you're drawing a conclusion with impartial, with
8 incomplete analysis, is all I'm saying.

9 THE COURT: I strike, because that's not
10 responsive. Ladies and gentlemen, witnesses don't get to
11 comment on what kind of conclusions lawyers are or aren't
12 suggesting by their question.

13 You're drawing conclusions. Lawyers just ask
14 questions, witnesses just answer questions.

15 Go ahead with the next question.

16 BY MR. WEINBERG:

17 **Q.** Let's go back. This was a conversation you had with
18 Mr. Johnston and Mr. Frank on Tuesday evening after court,
19 correct?

20 **A.** I can't remember if that was the first time I saw that or
21 not, but it was in the last few days, anyway.

22 **Q.** Last few days. You have been -- you testified on direct
23 Tuesday, did you not? That was the start of your direct?

24 **A.** Yes, it was.

25 **Q.** After you testified, did you go to the US Attorney's

1 Office?

2 **A.** Did I go in -- I can't remember if it was Tuesday that I
3 did. I certainly had a quick conversation, but I'm not sure
4 if we landed up in the attorney's office on Tuesday.

5 **Q.** Did you talk to the US Attorneys after you testified on
6 Tuesday?

7 **A.** Briefly.

8 **Q.** Did you talk to them after you testified Wednesday?

9 **A.** Yes.

10 **Q.** Did you tell them that you weren't tough enough
11 Wednesday, that you needed to come to court today and be more
12 aggressive? Is that what they said, Mr. Boomgaardt?

13 **A.** No, they asked questions and I answered them.

14 **Q.** So they asked questions of you during your direct
15 testimony between day two, Wednesday, and Thursday, correct?

16 **A.** Yes, I met with them yesterday afternoon, sorry.

17 **Q.** How many hours?

18 **A.** Half an hour.

19 **Q.** How about over the weekend? Did you meet with them
20 Saturday or Sunday?

21 **A.** I met with them for a short period of time on both days,
22 yeah.

23 **Q.** Were you surprised by the questions that you were asked
24 on Tuesday?

25 **A.** Not necessarily surprised by them. I mean, these --

1 **Q.** You went over the questions and the -- on the direct
2 exam, correct?

3 **A.** They asked me questions and I answered. Whether -- if
4 there's a lot of exhibits to go through and yeah -- and they
5 asked questions and I answered them. That was what happened
6 in those conversations.

7 **Q.** You sat with them for many hours going over tapes, going
8 over exhibits, answering every question that they asked,
9 correct?

10 **A.** Yeah. That's right.

11 **Q.** And that wasn't the first time this year that you sat
12 with them in preparing for your testimony as a prosecution
13 witness, was it?

14 **A.** Again, I did meet with them before and, yeah. They asked
15 me questions and I answered them. That's how all the
16 meetings with them have gone.

17 **Q.** How many parts of how many days this year did you meet
18 with the Government?

19 **A.** I don't know the answer to that off the top of my head.

20 **Q.** Four, five, six?

21 **A.** Something of that -- yeah, probably something like that,
22 four, five, something in that -- something in that range.

23 **Q.** Total of maybe 15, 20 hours at least?

24 **A.** That's probably about right.

25 **Q.** Some of the days longer, some of the days shorter,

1 correct?

2 **A.** Yeah.

3 **Q.** After four pretty full days back in 2014, correct?

4 **A.** Yes.

5 **Q.** Those are more like six -- seven-hour days, correct?

6 **A.** I can't recall. But they were fairly long. They were --
7 my recollection is they were pretty full days, yes.

8 **Q.** 30 hours there, 15 hours here, you probably spent about
9 35, 50 hours with Mr. Frank and Mr. Johnston, or Mr.
10 Johnston's predecessor, Ms. O'Shea, correct?

11 **A.** That sounds about right.

12 **Q.** And you sit with them when they ask you to, in part,
13 because you have agreed to be a witness for them, correct?

14 **A.** Yeah. Yeah. Partly, but certainly not the early ones.
15 I mean, again, I was -- I was over here on my own bill,
16 meeting -- attending those meetings.

17 **Q.** But you had a purpose, even though you were here on your
18 own bill and that was to persuade Mr. Frank and Ms. O'Shea to
19 give you a pass, not to charge you criminally, and let you
20 continue with your life without being a defendant in the
21 United States federal courtroom, correct?

22 **A.** I didn't even know at that point that I was -- I hadn't
23 been charged with anything. I didn't even know that I was a
24 person of interest in their investigation.

25 **Q.** Mr. Boomgaardt, you sat with the City of London. They're

1 conducting a criminal investigation into some of the same
2 subjects as you've testified to today, correct?

3 **A.** Yeah.

4 **Q.** You flew over to see the United States Attorney and the
5 Department of Justice in May of 2014. Accept my dates.

6 **A.** Yes. Okay.

7 **Q.** You signed a proffer agreement?

8 MR. JOHNSTON: Objection. Accept my dates?

9 MR. WEINBERG: Do you dispute that that's the
10 accurate day?

11 MR. JOHNSTON: No, but that's not -- you can say,
12 will you accept for the purposes of this question. I mean,
13 we don't just represent -- state facts.

14 THE COURT: Are the facts going to be different
15 than those were the dates?

16 MR. JOHNSTON: I don't --

17 THE COURT: Do you want to put in evidence on
18 those?

19 MR. JOHNSTON: No, we don't. We have the -- we
20 have them here, but --

21 THE COURT: Do you want him to --

22 MR. JOHNSTON: We think it's improper to just --

23 THE COURT: Fine. Mr. Weinberg. Show him the
24 document that says the date and ask him what the date is.

25 MR. WEINBERG: May I approach the witness?

1 THE COURT: You may approach the witness.

2 MR. WEINBERG: Thank you, sir.

3 BY MR. WEINBERG:

4 Q. Mr. Boomgaardt, I show you your first two -- and I
5 represent to you to be the Government's notes of your first
6 two proffers and ask you to look at the dates that are in the
7 lower level --

8 THE COURT: Do you want to see the documents before
9 he shows them to the witness?

10 MR. FRANK: That's fine.

11 MR. JOHNSTON: We have copies.

12 THE WITNESS: Yes, sir, the 1st and 2nd of May,
13 2014.

14 BY MR. WEINBERG:

15 Q. You came back in November of 2014, did you not?

16 A. I believe that's right, yeah.

17 Q. Four days, correct?

18 A. Again, it sounds about right. I can't remember exactly,
19 but for a number of days, anyway. Yeah.

20 Q. You don't dispute that you were here for four days
21 talking to the Government on your own dime, correct?

22 A. Correct.

23 Q. Did you have lawyers with you?

24 A. Yes.

25 Q. You signed proffer agreements, did you not?

1 **A.** Yes.

2 **Q.** Saying to you, at their very essence, that we are not
3 promising you that you are not going to be prosecuted as a
4 result of your four days of efforts, correct?

5 **A.** Yeah. There were no promises made.

6 **Q.** You knew there was a federal criminal investigation, did
7 you not?

8 **A.** At this point, I knew there was an investigation going
9 on. Yes, clearly.

10 **Q.** Clear that Ms. O'Shea came up from Washington from the
11 Department of Justice to join Mr. Frank, who was the very
12 head of the economics crimes division of the US Attorney's
13 Office and they talked to you for four days, correct?

14 MR. JOHNSTON: Objection.

15 THE COURT: To what?

16 MR. JOHNSTON: He was misstating the position of
17 Mr. Frank back in 2014.

18 MR. WEINBERG: I'm sorry.

19 BY MR. WEINBERG:

20 **Q.** He was the assistant head of the economic crimes division
21 and now is the head. You remember that, don't you?

22 **A.** Yes, I'm not sure I was aware of that at the time, but
23 there were conversations with Mr. Frank and Ms. O'Shea, yes.

24 **Q.** You still didn't think that there was a federal criminal
25 investigation that you might be part of?

1 **A.** I knew they were interested in the investigation, yes,
2 and it was increasingly obvious that, yes, they were
3 interested in what I had to say and me, as an individual,
4 yes.

5 **Q.** Do you remember on the second day, May 2, walking in
6 there and saying, I was a member of a criminal conspiracy?

7 **A.** No. That wasn't the -- that's not how it went. But --

8 **Q.** Let me see if I can refresh your memory. Let me go --
9 we'll get there tomorrow morning at 9 o'clock.

10 45, 50 hours with the Government, ballpark,
11 correct?

12 **A.** That sounds about right.

13 **Q.** Did your attorneys tell you they received a letter from
14 me asking for 90 minutes of your time at a time and place of
15 your convenience?

16 **A.** Yes.

17 **Q.** You know I have no 5K motion to file for you; is that
18 correct, Mr. Boomgaardt?

19 **A.** Yes, I'm aware of that.

20 **Q.** We have no agreement, correct?

21 **A.** We have no agreement.

22 **Q.** No cooperation agreement between you and me?

23 **A.** No.

24 **Q.** Your answer was no, correct? You declined to be
25 interviewed?

1 **A.** I declined to be interviewed. Yes, that's correct.

2 **Q.** Let's go back to 2012, when you were trying to preserve
3 your job. Do you recall saying the allegations against you
4 were unfounded and that you were staggered when you were
5 suspended? Are those your words?

6 **A.** I was staggered when I was suspended.

7 **Q.** "I'm being punished and sacrificed because of an agenda
8 that State Street has."

9 Do you recall those words?

10 **A.** Yup.

11 **Q.** "In my defense document," meaning the 21 page February 1,
12 2012, document, "I was trying to be completely fair and
13 honest."

14 Do you remember repeating that?

15 **A.** Yeah.

16 **Q.** And that was a document where you said you never deceived
17 a crime?

18 **A.** Yes.

19 **Q.** That was the document that you said how important honesty
20 and integrity were to you, correct?

21 **A.** I think I've already said yes to that, but yeah.

22 **Q.** You said "I'm the victim here." Is that what you said?

23 **A.** Possibly. I don't remember writing that exact word, but
24 if you're reading it from there, then I'll take your word for
25 it.

1 **Q.** Thank you. "At all times I conducted myself
2 professionally and with honesty and integrity. I never acted
3 to deliberately mislead a client. I've never breached a
4 standard of conduct. I've acted honestly and in good faith
5 and there were no grounds for a finding of misconduct
6 warranting dismissal. That's what you wrote, correct?

7 **A.** Yup.

8 **Q.** Do you recall attending an appeal on your objections to
9 State Street's dismissal, this being May of 2012?

10 **A.** Yes, I do.

11 **Q.** This is just a year after the events in question,
12 correct?

13 **A.** Yup.

14 THE COURT: Last question, Mr. Weinberg.

15 MR. WEINBERG: Okay.

16 THE COURT: Go head.

17 BY MR. WEINBERG:

18 **Q.** Do you recall that you were asked about whether you
19 believed that the undisclosed markups were, quote, "business
20 decisions"?

21 **A.** I don't recall that directly, but --

22 **Q.** Do you recall telling the hearing officer -- this is
23 during the appeal -- "there were business decisions allowed
24 in contract, even though you disagreed with the business
25 decisions"?

1 **A.** Yes, I remember saying those, yes.

2 THE COURT: I'm going to stop you here,
3 Mr. Weinberg.

4 MR. WEINBERG: Thank you, Your Honor.

5 THE COURT: Ladies and gentlemen of the jury, don't
6 discuss the case among yourselves, don't discuss it with
7 anyone else, don't do any independent research. Thank you
8 for your attention. I'll see you bright and early tomorrow
9 morning to resume at 9:00 a.m., thank you.

10 (The jury exits the courtroom.)

11 THE COURT: All right. I'll see counsel at 8:30.
12 Just a reminder, under a sequestration order, there's no
13 discussion between counsel and the witness during
14 cross-examination.

15 MR. FRANK: May we have a two minute sidebar, Your
16 Honor?

17 THE COURT: Do we have to do it now? Can we do it
18 in the morning?

19 MR. FRANK: It would be fresher if we did it now.

20 THE COURT: All right, I'll do it now.

21 Mr. Boomgaardt, you can step out, yes.

22 (The following discussion held at the bench.)

23 MR. FRANK: Judge, I want to put on the record why
24 we objected to Mr. Weinberg's statement. It's not because
25 his facts are not accurate. They are accurate. Mr. Weinberg

1 knows I have the highest distinction of him. I would never
2 suggest --

3 THE COURT: What's the issue?

4 MR. FRANK: The issue is --

5 THE COURT: You mean about the dates?

6 MR. FRANK: The issue is that a lawyer cannot make
7 a representation in front of the jury, except by facts that
8 are accurate. That is, vouching for the facts that is coming
9 out of the lawyer's mouth, and that is an absolute no-no.
10 And Mr. Weinberg's facts may be perfectly accurate. I'm sure
11 they are. But he can't testify in this case. And much of
12 his speechifying is, in fact, testifying, which is then
13 compounded by "accept my facts."

14 THE COURT: So a couple things. One, don't make
15 representations that they're true. But two, there's a
16 practical issue. It's totally different -- like at some
17 point in time, there's day questions --

18 MR. FRANK: Stipulate.

19 THE COURT: And so you can say -- he can say, I
20 represent to you that this is the date.

21 And if you want to object, then say --

22 MR. JOHNSTON: That's different.

23 THE COURT: -- we have no objection to him
24 representing the date. And if there's going to be a dispute
25 -- I don't know whether there's a dispute about the fact --

1 then stand up, but --

2 MR. FRANK: We were not clear in what the basis of
3 the objection was, partly because I nudged him and he stood
4 up and that's how it happened.

5 MR. WEINBERG: I'll use better language tomorrow.

6 MR. GOLDSTEIN: Well, if I can defend my good
7 friend, Mr. Weinberg. Mr. Frank shouldn't be standing up in
8 front of the jury and telling the jury that something
9 Mr. Weinberg had said was untrue. So if we're going to have
10 common rules, let's have common rules.

11 MR. FRANK: Let me just be clear. Some of the
12 things Mr. Weinberg said, not intentionally, were untrue.

13 THE COURT: This is between all of you. All of you
14 can have that discussion later, off the record.

15 MR. WEINBERG: That's okay.

16 THE COURT: Fine. Don't -- I agree with you. You
17 shouldn't be vouching whether -- my reaction is like if we're
18 not disputing the dates, why do we need to go through five
19 minutes to clarify what the date is.

20 I get it. He shouldn't say --

21 MR. FRANK: That wasn't the purpose.

22 MR. WEINBERG: That was the only purpose.

23 MR. FRANK: That was not the purpose of his
24 objection.

25 THE COURT: No, I understand that.

1 MR. FRANK: But the other point that we would make,
2 Your Honor, is again, with all respect, this is not about me.
3 There should be no attempt by the defense to personalize this
4 to two prosecutors, one of whom has been on the case for
5 three months.

6 MR. JOHNSTON: Well, six.

7 THE COURT: So it was untrue.

8 MR. FRANK: My status --

9 THE COURT: Washington just said so. It's the
10 oracle.

11 MR. FRANK: -- as deputy chief of the economic
12 crimes unit is irrelevant.

13 MR. WEINBERG: It's not irrelevant.

14 MR. FRANK: It is irrelevant.

15 THE COURT: I don't view your status as irrelevant.
16 I do think you need to be careful about how
17 personal you make it. Explain to them it's really the
18 Government for the people, it's department decisions. I may
19 say more about that, depending on how it goes.

20 I do think it's relevant. There's a wholly
21 different thing to meet with -- to meet with the Attorney
22 General of the United States, than to meet with a so-called
23 lowly assistant. The status of the person who you're meeting
24 with is in some way reflective of the significance.

25 MR. FRANK: I appreciate you putting me in that

1 context, Your Honor.

2 MR. WEINBERG: Steve hasn't had many
3 recommendations rejected in the office. But I would object
4 respectfully, because I do think decisions about 5Ks --

5 THE COURT: I do think you're entitled to ask
6 something about it. I think that -- because it is, in some
7 way -- to some degree, it's your recommendations that do
8 matter. You're the people who most know about it. But it's
9 not your personal decision, it's a decision of the
10 Government.

11 MR. FRANK: But what Mr. Weinberg said, which was
12 not quite right, was that I make the decision. As he knows
13 there's a multilayer process. And let me assure you that
14 particularly when the esteemed fraud section is involved,
15 there are many, many, many lawyers --

16 MR. JOHNSTON: That is added value there.
17 Bureaucracy.

18 THE COURT: Right.

19 MR. WEINBERG: My view of the world and Mr. Frank
20 makes the decisions.

21 THE COURT: Fine. I'll see you guys tomorrow.

22 (Court in recess at 1:06 p.m.)
23
24
25

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14 Dated this 7th day of June, 2018.

15

16

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18 /s/ RACHEL M. LOPEZ

19 /s/ KELLY A. MORTELLITE

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